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15. J. C.

Cursus Cancellariæ ;
OR, THE
COURSE
OF
PROCEEDINGS
In the High COURT of
CHANCERY.
WHEREIN

The Authority, Jurisdiction and *Modern Practice* of that COURT are methodically and distinctly treated of, from the Bill Filed, and Process thereupon, to the Final Sentence and Decree.

As also
Of Reversing DECREES, by Bills of Review, and Appeals to the House of Lords: And the Method of Proceedings in the *Petty-Bag-Office*, &c.

With Variety of Useful PRECEDENTS throughout.
And a Compleat TABLE to the Whole.

The Second Edition corrected, with Additions.

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CHANCERY.
 In the High COURT of
 PROCEEDINGS
 OF
 COURSE
 OR THE
 CHIEF CANCELLARY;

MUSEVM
BRITANNICVM

The Second Edition corrected, being a Revision of the
 First Edition, with a complete TABLE to the whole.
 With Notes, and a PREFACE by the Author.
 Printed by W. & A. G. Smith, 10, Abchurch Lane, London, E.C. 4.
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THE
PREFACE.

I SHALL make no Apology for publishing the ensuing Treatise, nor pre-engage the Reader's Judgment (the usual Design of Prefaces) by writing an Encomium on the Work; seeing, after the most Learned or Elaborate Harangue, Men will judge according to their own Opinions; to which, however partial or prejudiced, every Author must submit.

'Tis true, Systems of Law and Equity being of another Nature than ordinary Treatises, and the Generality of Readers incapable of judging thereof may be thought exempted from the foregoing Observation: But we find it otherwise. For even the most capable are too often insensibly sway'd by Passions and Prejudices, — Obrectatio enim & Livor magnis celantur Animis, & pronis auribus accipiuntur.

Therefore I shall content my self (and I hope the Reader) with giving him in this Place only some brief Account of the Design of the Work, of the Contents thereof, and of the Method observed therein: And for other Particulars, refer him to the Perusal

The Preface.

usal of the Book, or (if he please) the Table at the End.

The Author's Design in Composing it was chiefly to give such Gentlemen as are Students in the Inns of Court and Practisers in Chancery, a System or Scheme of the Present Practice and Method of Proceedings in that most High and Honourable Court. And to that End he has digested and distributed the same, according to the natural and regular Course of Proceedings there.

And as an Introduction thereto, he first treats of the Original, the Jurisdiction and Authority of the Court, both Ordinary and Extraordinary, and of such Cases as are usually relieved, or denied Relief there: And next of the Office of the Lord Chancellor and Keeper, Master of the Rolls, and of the other Officers, Clerks and Attendants in Chancery. After which he proceeds to shew the more immediate Practice and Method of the Court, according to the following Order, viz.

Pag. 36.

The Method of Drawing, Preparing and Filing Bills in Equity; of Taking out, Serving and Returning Subpœna's to appear, &c. and of other Writs and Processes of the Court to enforce the Defendants Appearances thereupon, as Attachments, Proclamations, Commissions of Rebellion, Serjeant at Arms, Commitments, &c.

64.

95.

131.

136.

The Method of the Defendant's Appearing and Answering the Plaintiff's Bill, and how Answers are taken, prepared and filed, either in Town, or by Commission in the Country; as also of Disclaimers, of Exceptions to Answers, of further or better Answers, and of Hearings upon Bill and Answer. Vide p. 149.

152.

174.

Then he proceeds to Replications, Rejoinders, Sur-rejoinders, &c. and afterwards treats of Pleas and Demurrers, both jointly and severally, and adds some

The Preface.

*Some further Observations of Answers, &c. as con-
joined with Pleas and Demurrers, and of Hearings
thereupon, i. e. without any Depositions of Wit-
nesses in the Cause.* 224.

*After this, He shews how a Cause is brought to
Hearing upon the Deposition of Witnesses ; and to
that End treats of Drawing and Filing Interroga-
tories, of Commissions to examine Witnesses, of
the Carriage and Execution thereof, and how Wit-
nesses are examined by Commissioners, and how by
the Examiners ; also of Examinations in perpetuam
Rei Memoriam, and De bene esse, as to prove a
Will, &c.* 241.
242.
255.
276.
293.

*Next, He treats of Proofs in the Cause, either by
Depositions, Exhibits, or Witnesses viva voce ;
and then shews the Method of publishing Depositions,
and setting down the Cause for Hearing ; as
also of Hearings and Re-hearings, and then of
Dismissions and Decrees, and gives Directions for
drawing up, Enrolling, Executing, Exemplifying,
and Reviving Decrees : As also of Reviewing and
Reversing Decrees, either by Bills of Review, or
Appeals in Parliament. Vide pag. 380, 403.* 295.
325.
345.
359.
371.

*Hitherto he proceeds according to the regular and
orderly Course of Proceedings in this Court : But
there being certain incidental Matters, which often
intervene in divers Parts of the Proceedings, he
afterwards separately and distinctly treats of such,
viz. First, of Affidavits, Petitions, Motions, Refe-
rences, Reports, Certificates and Orders of Court.
Vide p. 434.* 417.
420.
426.

*And next of Injunctions, Certiorari's, Proce-
dendo's, and some other Writs and Bills not treated
of before, for which see p. 439.* 434.

*And then of Parties to the Suit, and of certain
Persons favoured in Equity, as Infants, Non Com-
pos, Guardians, Trustees, Feme-Coverts, Heirs,
Execu-* 459.
463.

The Preface.

Executors, &c. and particularly of Paupers. *Vide* p. 459, &c.

Lastly, He comes to the ordinary Power of this Court, and shews how the Method of Proceedings in the Petty-Bag-Office is agreeable to the Course of the Common Law, and Instances in the Cases of Privileged Persons, as Officers, Clerks and Ministers of the Court; as also of Privilege of Parliament, of Suitors, &c. and of Proceedings in this Office on Recognizances, Statutes-Staple, &c.

And then by Way of Addenda gives an Account of the Event of that Controversy inter Lord Coke and Chancellor Egerton, touching the Jurisdiction of the Court of Chancery, and the Removal of the Chief Justice thereupon. Besides which, the Reader may observe divers curious Precedents and Records never before published, interspersed throughout the Work.

So that it will appear the Author has endeavoured to comprehend in this Treatise whatever may be necessary to render it A Compleat System of the present Practice of the High Court of Chancery.

Vale.



OF THE
Court of Chancery.

CHAP. I.

*Of the Jurisdiction and Authority of the
Court of Chancery, both ordinary and
extraordinary.*



THE Subject Matter of the ensuing Discourse is the Authority, and Jurisdiction, and Method of Proceedings of that Court, which at present is esteemed the highest Court of Judicature in this Kingdom next the Parliament, from whence there lies no Appeal but to that Supreme Judicature: For Equity in the Court of Chancery in Process of Time has attracted to its Cognizance not only such Matters as primarily and originally belong'd to it, (*viz.* such Cases wherein the Common Law afforded no Relief) but has also in many Cases assumed a Power of controlling and rendering ineffectual, even Judgments obtained in *B. R.* and other Courts of the Common Law.

Touching the Original of this Court it is to be considered, That in the Time of the *Saxons*, and also of the *Danes*, the King himself did hold a High Court

The Superiority of the Court.

Original of Chancery.

Of the Jurisdiction and Authority

of Judicature, wherein he sat in Person, and did judge, not only according to mere Law, but also according to Equity; and this appears by the 7th Law of King Edgar, *Nemo in Litem Regem appellato*, Let no Man appeal to the King touching any Matter in Variance, unless he cannot find Right at Home. But if that Right at Home be too heavy (*si sit summum Jus*) then let him appeal to the King to have it lightened. And the like Law is to be met with *inter Leges Canuti Regis*; whereby it appears there was by those Laws a Power vested in the King to moderate the *Summum Jus* according to Equity and good Conscience.

*Vide Lam-
hard's Saxon
Laws.*

And Chan-
cellor.

And as Petitions or Appeals for moderating the Rigour of the Law multiplied, it necessitated the Prince to depute a Substitute for receiving and answering those Petitions, who though perhaps at first was only a Ministerial Officer, and called *Monitor* and *Rememorator*, &c. from his putting the Prince in Mind of such Matters as expected his Decision, yet being a Person who subscribed the same, with his *Teste* thereto, he soon arrived to a Judicial Authority, and was called *Referendarius* or *Vicarius Regis in Foro Conscientie*; or as *Budaus* terms him, *Promus & Condus Regalis Clementie*; and he having a certain fixt Place in the King's House appointed for his Office, where Suitors attended, that Office was soon converted into a *Court of Equity*.

*Vide post.
pag 14.*

The End of
its Institu-
tion.

I know it is said by some, That this Court was not originally vested with any Judicial Power, and that it was instituted at first by *W. 1.* only as a College or Fellowship of Scribes or Clerks to form the King's Writs, Patents and Commissions, and to register or enroll them in their Offices, over whom there was set one who was to examine the same, and if allowed to seal them with the King's Seal; and he was called the *Custos Sigilli*, i. e. The Chancellor or Keeper of the Seal; and therefore the Meaning of that Saying in *4 H. 7. fo. 5. Quod nullus recedat à Curia Cancellaria sine Remedio*, must be, That every one upon Complaint made, may have a Writ Remedial out of the Court of Chancery returnable in other Courts, and not that the Chancellor should be a Judge of such Cases. For, say they, at first there were no Writs of Grace, but all

To issue
Writs and
Patents, &c.

all Writs were remedial and due *ex debito Justitiæ*, and which the Chancellors or Keepers were by their Oath; and the Duty of their Office obliged to issue. *Vide* Preface to Co 9th Report, and *Cambden's Britannia*, 80 & 180.

I confess this Exposition of Words, *Nullus recedat, &c.* Q If originally of Judicial Authority? seems to be the most genuine, and that there is some Colour for that Opinion, That the Chancery at first had no Judicial Cognizance of Matters of Equity; and to the Reasons before-mentioned these may be added, *viz.* That the Chancery in some of our Books is called *Officina Brevium Originalium & Remedialium*, Negatur. and accordingly it was defined by *Bracton* and *Fleta* to be *Collegium Scribarum, &c.* And we find even at this Day, That those Societies appropriated for training up young Gentlemen in forming of Processes, &c. at Law, as Entering Clerks and Attornies, are denominated *Inns of Chancery*, and instituted for an Employment inferior to that of the *Inns of Court*: The former instructing 'em in the Points of Practice, whereas in the latter they are more conversant about Judicial Decisions.

But notwithstanding these Reasons, I am of Opinion, That the *Court of Chancery* in its first Institution was vested with a Judicial Authority: For it is to be observ'd, That the Chancellor, and the Keeper of the Seal were at first distinct Offices; and though the Keeper's Power was only ministerial, yet the Office of Chancellor had always a Judicial Power annex'd to it, as might be shewn, not only from the Import of the Word [*Chancellor*] the Dignity of his Office, the Practice of other Nations, but likewise from divers Instances collected from the Antiquities of our own Countrey. But of this see a few Words in the Preface. Affirmatur.
Chancellor and Keeper two distinct Offices at first.

I grant the Chancellor or Keeper's Power has been since its first Institution mightily advanced, and that principally from three Causes, *viz.* First, from the Favour shewn them by our Kings and Princes. Secondly, from the additional Powers and Authorities granted them by several Acts of Parliament; And, thirdly, from an Over-Strictness in the Judges in keeping close to the Rules and Forms of the Common Law. Their Power enlarged, from three Causes.

Of the Jurisdiction and Authority

1. As to the first of these Causes. The Chancellor being always one whose Office obliged him to a more immediate Attendance on the Person of the Prince, being to inspect and sign all Royal Mandates, Grants, and Concessions, (as appears from several Charters granted before the Conquest) he not only became the Director both of the Councils and Conscience of the Prince, with Respect to those Grants, but consequently enlarged his Authority as the Prince enlarged his Prerogative; and his Name and Office, as well as the Exercise of his Authority being derived from the Civil Law, which attributed a more absolute Power to the Prince than the Common Law, such Princes as were willing to be unbounded in their own Power, endeavoured to enlarge the absolute Power of their Chancellors. *Vide Fortescue de Laudibus Legum Angl. Cap. 33 & 34. Davis Rep. 70. Preface to 8th Coke, &c.*

2. Besides which (and perhaps as an Effect of the precedent Cause) several Statutes have from Time to Time been enacted by our Parliaments, as influenced by our Court, which have lessened the Authority of that once great Officer of the Realm, which in the Saxon Times was elective, and called, *The Alderman of the Kingdom*, and long after styled *Capitalis Justiciarius Angliæ*, & *primus in Regno post Regem*: For much of this Authority is now by Act of Parliament transferred to the Lord-Keeper or Chancellor. See the several Statutes, 36 E. 3. c. 9. 37 E. 3. c. 18. 17 R. 2. c. 6. 4 H. 4. c. 9. 15 H. 6. c. 4. 3 H. 7. c. 1. 21 H. 8. c. 20. 30 H. 8. c. 10, &c.

3. And it cannot be denied but that the Judges of the Common Law keeping too strictly to the Rules and Forms thereof, have not only lessen'd the Opinion of its Purity and Integrity, and by Consequence its Authority with the People, but thereby Occasion has been given for the Court of Chancery to enlarge its Jurisdiction, under the specious pretence of doing Equity, and that no Mistake or Error in the Form of Proceedings shall prejudice the Right of any Suitor in that Court.

4. To which may be added, That the great Learning and Abilities of the Chancellors and Keepers in the
Reign

Reign of Queen Elizabeth and her Successors have not only enlarged their Authority, but wonderfully endeared 'em to the Favour of their Sovereigns.

And hence it was, That when a Controversie happened, 14 Jac. 1. between Sir Edward Coke then Lord Chief Justice of B. R. and the Lord Chancellor Egerton. The Chief Justice saying (on occasion of the Lord Chancellor's questioning a Judgment given in B. R.)

Controversie between Lord Coke and Chancellor Egerton.

That the Common Law of England would be overthrown by the Chancery, and that the Light of the Law would be obscured by Pretence of Equity. The Chief Justice was thereupon forced not only to beg Pardon on his Knees at the Council-Table, but was also severely reprimanded by the King, sequestred from the Council, restrained from riding the Circuit, and soon after removed from his Office; and thereby the extraordinary Jurisdiction of the Court of Chancery in controlling Judgments given at Common Law was enlarged or established; a particular Account whereof may be seen in the End of this Treatise. But to proceed.

And the Ch. Justice's Punishment, &c.

The Jurisdiction of this Court is now of two Kinds, viz. 1. Ordinary or Legal. 2. Extraordinary or Absolute.

Chancery of a two-fold Jurisdiction.

The ordinary or legal Jurisdiction it that wherein the Lord Chancellor in his Proceedings and Judgments is bound to observe the Order and Method of the Common Law; and in such Cases the Proceedings are usually in Latin, and for the most part filed or enrolled in the Petty-Bag Office; of which Office *vide postea*.

1. Ordinary Jurisdiction.

And by Virtue of this ordinary and limited Power it holds Plea of Recognizances acknowledged in this Court, Traverses of Offices, Writs of *Monstrans de Droit*, *Scire Facias* to repeal Patents, Endowments of Women, Writs of Partition, and the like, wherein this Court is to observe the Rules used in Proceedings at Common Law, and the Parties are to plead and join Issue here accordingly; and the Record being made up in the Petty-Bag Office, is from thence transmitted into the King's Bench to be tried by a Jury, and the Verdict is to be certified hither, and thereupon this Court is to give Judgment according to the Rules and Authorities of Law.

Instances thereof.

Trial by Jury, &c.

Commission
issued.

3 Chanc. Ca-
ses, 136.
Superfedeas
of Privilege,
&c.

Subpœna to
force Witnes-
ses to appear
in other
Courts.

2 Extraordi-
nary Juris-
diction.

Relief by Bill
and Answer.

Contribu-
tion.

Trust.

Against Ex-
tremity.

Agreement.

Tuition.

And by the same limited Power, wherewith this Court has been invested by divers Statutes, it issues Commissions touching Charitable Uses, Bankrupts, Setters, &c. and in some Cases, Commissions have been granted to examine Wastes, to set out meet Ways for Passages, to prove Customs and Usages, to inquire touching Legitimacy, Infancy, Lunacy, or Idiocy, and to examine Witnesses *in perpetuam rei memoriam*; also in some special Cases, a *Superfedeas* or *Subpœna*, of Privilege has been here granted, to discharge a Man out of Prison.

And a *Subpœna* may be had here to force Witnesses to appear in other Courts, that have no Power to call them in, to testify their Knowledge, as in *London*, when the Man lives within its Jurisdiction. *Cary's Rep.* 37, 43, 44. 1 *Chanc. Cases*, 203. Yet Note, Some of those Things seem to be done by virtue of the absolute Power, for all Power is such, which is not limited by the Law; but generally by the Extraordinary or absolute and unlimited Power is intended that Jurisdiction which this Court exercises in Cases of Equity, wherein Relief is to be had here on a Suit by Way of *English* Bill and Answer. And when it proceeds by Way of Bill and Answer; In many Cases this Court will give Relief against, besides, and beyond the Rulei of the Common Law, some whereof follow, *viz.*

Where a Charge lies upon one Man alone by the Common Law, where in Equity, others ought to contribute a Part to his Charge, in this Case this Court will give Relief.

So it will relieve one against another, who had falsified and broken his Trust with him.

It gives Relief against the Extremity of an Engagement, where either the Engagement is without any Consideration, unseasonable, dishonest, or discharged; or where there hath been either Fraud, Force, or the like, used to procure the Thing to be done. Also to relieve one against the Extremity of a Penalty or Forfeiture.

And where by Law a Man cannot be compelled to perform an Agreement, this Court enforces it.

It will decree one to have the Tuition of a Child that belongs to him. *Cary*, 96, 97.

And enforces the Inrolment of a Deed, if need be, *Inrolment.*
Id. 97.

It will decree a Recovery of Land or Money given to charitable and pious Uses, and mis-impoyed. *Charitable Uses.*

It will inforce the Husband to give his Wife Alimony. *Alimony.*

Where Creditors are unreasonable, this Court forceth them to take a reasonable Composition of the Debtor, he being disabled by irretrievable Losses, not by ill Husbandry. *Creditors. Composition.*

This Court will restrain other Courts that take upon them a greater Jurisdiction than properly they have, and remove the Suit hither by *Certiorari.*

This Court will reduce the general Customs of a Manor, to a Certainty between the Lord and Tenants, or between the Tenants themselves. And decree one to recover a Liberty of Common, of Fishing, or the like, and upon every Interruption, and an Affidavit thereof, an Attachment may be had. *Cary* 104. *Manors. Liberty of Fishing, &c.*

It will ascertain and stint Common, and ascertain the Fines of Copyholders. *Ascertain Common and Copyholders Fines. Ways.*

It will also ascertain and set out a Way. *Id.* 23. And ascertain and distinguish a Man's Land when 'tis confounded with another Man's. *Cary's Rep.* 16. *One Man's Land from another's*

Where Freehold or Copyhold Land are confounded, it will distinguish it; or if it be lost, it will give a Recompence for it. *Pickering's Case, 5 Car.* *Copyhold Lands, &c. Executors.*

This Court (where Executors or others have Money in their Hands, there to lie long) inforceth them to give Security and Interest for it.

This Court will enforce the Recovery of a Legacy, or force the Performance of a Will. And examine the Probate of a Will, especially if it concerns Land. *Legacy. Probate of Will.*

It serves for the Recovery of ones Land, Debt or Duty, although he have lost the Conveyances or Writings, by which he should make his Title to it, or otherwise be without Remedy for it. And for Recovery of Tithes in Kind, or Money for it in *some Cases.* *Lost Writings. Tithes.*

It inforces him that hath sold Land, and taken Money for it, assured by defective Conveyance, to make the same Perfect and Good. And force a Man to prove Payment of Money agreed and acknowledged to be given upon Sale of Land. *Dyer* 59. *Defective Conveyance. To prove Payment for Land.*

Attornment.

It will enforce a Tenant to attorn, to perfect an Assurance. And force an Action to be tried in any County.

In these and such like Cases this Court of Chancery doth always, or for the most Part, give Relief; as you may see more at large in *Totbil's* and *Cary's* Reports.

Disinheritance prevented.

In some other special Cases likewise this Court doth exercise a Power, as to prevent the Disinheritance of an Heir, or restore it.

Extinguishment.

To avoid the Extinguishment or Suspension of Rent or Common, *Crompt. Jur.* 49, 50.

Occupancy.

To prevent an Occupancy.

Limitations.

To avoid the Bar of an Action, by the Statute of 21 *Jac.* of Limitations.

Payment by Executor.

To order an Executor to pay a Debt out of Course.

About Inclosures and Water-Courses.

To cause Inclosures to be made of Lands and Grounds that are Common, and to give Relief against the turning of a Water-Course from a Mill, so as there be not a special Action on the Case for it; for then this Court will not proceed therein.

Not against an Act of Parliament, &c.

And regularly this Court *doth not give Relief* where the Substance of the Suit by Bill and Answer tends to the Overthrow of an Act of Parliament, made for Publick Peace and Repose, or to the overthrowing any fundamental Point of the Common Law, or to overthrow and take from other Courts their peculiar Jurisdiction, or the like. And,

Not against Common-Law.

In all such Cases, wherein the Plaintiff hath his Remedy at Common Law for the very same Things, he shall not be relieved here. Yet where a Promise is made to assure Land for a certain Sum of Money, in this Case the Party may either sue at Law for Damages, or in Chancery for the Land it self. The like Case for a Nuisance, where the Law gives me Damages, I may sue here to have the Nuisance removed, or the Thing it self restored. 21 *H.* 7, 41. *Cary's Rep.* 71.

To assure Lands.

Nuisances.

Wills Nuncupative, Parol Leases, &c.

And yet there may be some special Circumstances in the Case, which may make the Court not to retain it; as where a Suit is grounded upon a Will Nuncupative, Lease Parol, or long Lease to avoid Wardship, or to establish Perpetuities, or to defeat Purchasers, or for Brokage or Rewards to make Marriages, or for Bar-

of the Court of Chancery.

9

Bargains at Play, or Wagers, or Bargains for Offices against the Statute of 2 *Edw. VI.* or upon Contracts for Usury or Simony; or if it be for Land not worth 40*s.* a Year, or for any thing else under the Value of 10*l.* those are regularly disallowed here; and sometimes upon Notice taken thereof by the Court, upon Motion or upon Affidavit only before the Cause comes to hearing, it is dismiss'd; but if not, when it comes to hearing, it is dismiss'd. *Cary's Rep.* 7, 8, 27, 24, 76. yet there are some Circumstances that may make some of these retainable, as where the Suit for so small a Matter is for the Poor of a Parish, or the like. *Id.* 103.

Usury or Simony.

Dismission upon Motion or Affidavit.

Concerning the Poor, &c.

In such, and the like Cases as these (the Matter being heard upon Bill and Answer, and the Proofs of Witnesses read) the Court may (without any regard to Form or Mispleading, so as the Truth, *aliis viis & modis*, may be discovered) proceed to sentence it according to Equity and good Conscience.

Hearings.

All Persons able in Law to sue or be sued, may in this Court sue or be sued, tho' not in all Cases. And Relief may be, and is often given against, or for an Infant in this Court; touching which Matters, see the proper Chapters or Titles hereafter.

Parties.

Infants:

But *Note*, There are certain general Rules to be observed by this Court, which even in Matters of Equity, do limit and restrain its extraordinary and absolute Power; and therefore tho' this Court hath Jurisdiction of Infants, Lunaticks, Ideots, Charitable Uses, &c. yet seeing divers Statutes have altered, restrained, or enlarged upon its Power in some Particulars in those Cases, this Court is to exercise its Power so far only as such Statutes do direct, and no further. *Chanc. Cas.* 136. and where the Chancery (according to Rule) cannot relieve in a just Cause, the Parliament will give special Directions for Relief therein. *Id.* 205.

Absolute Power of Equity restrain'd.

Restrain'd by Statutes.

The Court of Equity is a proper Interpreter of a Statute; But that the Chancery cannot help in Equity against an Act of Parliament. 1 *Chanc. Cases*, 56.

Relief directed by the Parliament.

Court of Equity Interpreter of a Statute.

Equity consists purely in Action, and is only attainable by Process in a Court of Equity. *Id.* 208. *Moo. Rep.* 5 *Jac. Moor* and *Cole's Case*.

Equity how attainable.

Where

Where Equity creates the Estate.

He that will have Equity must do it.

Where the Defendant in Court may take Advantage of the Stat. of Limitations and where not.

Some Advantages at Law.

Equity will relieve against a general Rule.

Where Law and Equity will prevail against Equity only.

Where a Penalty cannot be demanded in Equity.

Conveyances to be supported.

Chancery how limited.

Where a Court of Equity may help, where not.

Where Equity creates the Estate, it shall be guided by Conscience. *Id.* 236. *Norcliff* against *Worsley*, 1 *Rol. Abr.* 379. *Yel.* 7. 2. *Rol. Rep.* 436. 3 *Vent.* 350. *Hard.* 96.

He that will have Equity to help where the Law cannot, shall do Equity to the same Person, against whom he seeks to be relieved in Equity, *Id.* 97. See this Particular treated of afterwards.

If a Suit be in Chancery for a Debt for Rent by Lease Parol, or simple Contract, and beginneth within Time of Limitation, and be dismissed after the time of Limitation, the Court will not order the Defendant to take no Advantage of the Statute of Limitation. But if in such Suit the Party be staid by Act of Court, as by Injunction, &c. it's otherwise, for the Act of the Court shall do no Prejudice, as in Case of Demurrers at Common Law, 2 *Chan. Cas.* 217.

When the Defendant hath Judgment in Chancery, he shall have the same Advantage as at Law. *Id.* 225. *Hill* 28 and 29, *Car.* 2. *inter Sims & Urry.*

The Common Law relieveth not particular Cases against a general Rule, yet Equity doth; so as the Example introduces not a general Mischief. *Id.* 93.

And in Chancery every particular Case stands on its own particular Circumstances, and he that hath only a Title in Equity, shall not prevail against him that has Title both in Law and Equity. *Id.* 213. *Sir Hugh Windham* against *Lord Richardfon.*

A Penalty can never be demanded in Equity, the Party performing that for which the Security or Penalty is given, 2 *Chan. Cas.* 88. *Pas.* 34, *Car.* 2. *Hele cont. Hele.*

No Conveyance is to be set aside in Chancery, that can be supported by a reasonable Construction. 3 *Chan. Cas.* 51. *Duke of Norfolk's Case.*

Chancery not unlimited or unbounded by any Rules, but limited by Precedents and Practices of former Times; and it is dangerous to extend its Authority further. *Id.* 95. in the Case of the Earls of *Bath* and *Montague.*

That a Court of Equity may do great Things, but they cannot alter Things, or make them to operate contrary to their essential Natures and Properties. *Id.* 67, in the same Case.

That

That a Power of Revocation shall not extend further in Equity than the Law will carry it. That the Law hath been liberal in expounding Powers of Revocation favourably, and that where the Law expounds a Thing according to an equitable Constitution, there is no Reason for Equity to extend it further. *Id.* 126. Neither is any Revocation good in Equity, that is not good in Law, unless there be a particular Intention in the Person to revoke, or he be hindred by Fraud or Accident. *Id.* 108, 109, in the same Case.

Power of Revocation, how expounded, &c.

If not good in Law, neither in Equity.

Equity rais'd out of a Deed which was not proved, upon Colour of Equity for Want of the Deed. 1 *Chan. Cas.* 47, 48. *Kinaaston cont. Maynwearing, Pas.* 16 *Car.* 2. but it was conceived very hard, for the Court to raise an Equity out of a Deed when it was not proved. *ib.*

Equity raised out of a Deed which was not proved.

Where an Act is done, tho' in Time, or other Circumstances, not done well, the Defect, in some Cases, may be supplied in Equity, 2 *Chan. Cas.* 30. Also Accidents are a proper Object of Relief. *ibid.*

Defect in Circumstances supplied.

Accident's

But Chancery will give no Assistance to discover, in Prejudice of the King's Charter. *Id.* 95. *inter Brooks and Brodley.* Where there shall be a Discovery see after.

No discovery in prejudice of the King.

Such Matters as have been formerly examined in the Exchequer, may be re-examined in the Court of Chancery. 1 *Chan. Cas.* 156. Especially upon a Dismission there without Prejudice in Law or Equity.

Matters heard in the Exchequer re-examined here.

And *ibid.* 201, in the Case of *Vanbrugh and Cock*, the Lord Keeper declared, That Judgments and Sentences given in the Ecclesiastical Courts, were as subject to the Equity of this Court, as Judgments in the Courts of Common Law.

And Judgment in other Courts subject to this.

Thus we find that Judgments given in any Court whatsoever within this Kingdom, except the Parliament, may be controuled by the Equity or absolute Power exercised in this High Court of Chancery.

But here I think fit to observe what a fam'd Lord Chancellor once said touching this Matter, *viz.* That Equity or Conscience is so to be regarded by this Court, that the Laws of the Kingdom be not neglected; for they ought to meet and join in uno & eodem Tertio, in a certain Third, *id est*, The Moderation of Extremity: For else, as

Elasmers.

extream

Of the Jurisdiction and Authority

extream Justice is often the highest Injustice, so extream Equity will be little better than Iniquity, and Conscience it self be Unconscionable.

Cases denied Relief.

And therefore this Court will not relieve a Man against an expresse Maxim, or the Reason and Policy of the Common Law. 1 Roll. Abr. 375, 376.

Executors, &c.

As an Executor or Administrator cannot be charg'd in Equity for a Contract made, or a Tort done by the Testator, for which no Remedy lies at Law. 2 Chan. Cases, 303, 304. Vide Moor, 556. 1 Roll. Abr. 376.

Nor ought an Executor or Administrator to be compell'd in a Court of Equity to pay Legacies before Obligations forfeited; for this is against the Order of the Common Law. 1 Roll. Abr. 376.

Jointenants.

And in 1 Roll. Rep. 338, 'tis adjudged, That one Jointenant cannot sue his Companion in Equity for the takings of all the Profits, because 'tis against a Maxim in Law. Vide 1 Sid. 33. 2 Rol. Rep. 434.

Survivors.

And in Winch. 72, No Relief shall be in Equity against a Survivorship, unless there were an expresse Agreement made to the contrary, during the Lives of the Parties.

Assignees.

Also the Assignee of a Covenant cannot sue in Equity to have the Benefit of the Covenant; for it is against a Maxim in Law to assign a Covenant. 1 Roll. Abr. 376.

Infants.

And if an Infant sells Lands for Money, and purchases other Lands with the Money, yet this shall not be help'd in Equity; because an Infant is disabled by Law to make such Sale. *ibid.*

Full Age.

And if one of full Age do by his own Act disable himself or another from doing a Thing which is for his Benefit, he shall neither be relieved in Law nor Equity. As,

Own Act.

If one of full Age makes a Lease for Years, of Land wherein he hath no Right, and afterwards purchases the same Lands, neither he nor his Heirs shall avoid this Lease, either in Law or Equity.

Non Compos.

So if one who is *Non compos* aliens Lands, this shall not be restored to him by Chancery upon a Matter of Equity, because against a Maxim of Common Law. 1 Rol. Rep. 219.

Also

Also Relief has been generally denied by this Court, in the Instances following, viz.

Suits grounded upon Wills Nuncupative, or Leases Parol. Parol Wills. Leases.

Also verbal Agreements not executed on either Part. Agreements.

Perpetuities of all kinds, either by Common Assurances, Statutes acknowledged, or the like, for they fight against God. Perpetuities.

Reversions or Remainders limited or vested in the Crown to defeat Purchasers. Remainders.

Brokages for Marriages, and Suits to re-have the Money, Jewels, or wooing Gifts presented. Brokages.

Contracts upon Casual Morts, or upon Returns from the East or West Indies, &c. Also all usurious Contracts and simoniacal Bargains. Contracts.

A Man steals his Wife against her Friends Consent, and after sued for her Portion here, but was disinis'd, the Lord Chancellor Egerton saying, *He that steals Flesh, let him provide Bread how he can. Bagnal con. Laugton. Mic. 9. Jac. 1.* Marriages.

If two submit to the Award of J. S. of all Controversies, who makes his Award but of Part of the Matter submitted, so that it is void in Law, this shall never be made good in Equity. 1 Rol. Abr. 377. Awards.

Nor will Country Awards, tho' made upon the voluntary Submission of the Parties, if made without any Order or Reference of this Court, be supported here.

A Court of Equity cannot compel an Executor to perform a Decree made there against a Testator, before a Statute acknowledged by him, 1 Rol. Abr. 377. Executor.

And per Roll. Ch. Just. An Obligation becoming due after the Death of the Testator, shall be satisfied before a Decree in Chancery. Stile's Rep. 38. Pract. Regist. 585. Statutes. Obligations.

If a Man in Consideration of 100 l. or other Sum of Money, assumes to make a Lease for 21 Years, and dies, his Heir is not compellable in Law nor Equity to perform the same. 1 Roll. Abr. 377. Heir, &c.

This Court will not relieve Estates derived under concealed Titles, the Lord Egerton saying, *That as such Titles began by the Rigour of the Law, so let them be maintained by it if they can.* And he used to say, there were

were three Things which he would never relieve in Equity, viz. *Long Leases*, as for 1000 Years, &c. *Naked Promises*, and *Concealed Titles*. *Vide Lit. Rep. 3. & Godb. 192.*

Negligence.

And 'tis held in 26 E. 4. 6. b. That if a Man comes to be remediless at the Common Law by his own Negligence, he shall not be relieved in Equity; as if he pays a Statute or Obligation without an Acquittance or delivering up of the Statute or Obligation.

Present Practice.

And yet by the present Practice of this Court, in such a Case Relief is usually given: and where it appears that Bonds or other Specialties are paid or satisfied, this Court does often decree them to be delivered up or cancell'd. *Vide Hard. 23. 1 Bulst. 158. Lat. 24, 146.*

Bond lost.

But if a Man loses his Obligation, in which another is bound to him, he shall not be relieved for this Debt in a Court of Equity. 1 *Rob. Abr. 375. Larch. 146, 148.* But see 1 *Chanc. Caf. 78.* this is doubted.

Judges consulted.

And by *Dodderidge* and *Chamberl.* in 2 *Roll. Rep. 434.* in Times past, the Chancellor used to send for the Judges to know when Equity should be admitted against the Common Law, and when not.

Equity against Equity.

And in all Cases where there is Equity against Equity, that *Equity which is most consonant to the Rules of Law ought to prevail.*

Secret Intents.

And therefore in the Construction of all Conveyances, Grants or Wills, the Rule laid down in the Case of *Cox* and *Quantock* seems to be rational, *That where the Intention is secret and not declared, it must give Way to the legal Intent.*

1 *Chan. Caf. 138.*

4 H. 4. c. 22.

And it may be proper also to consider the Stat. 4 H. 4. c. 22. which enacts, That whereas in Pleas real as well as personal, after Judgments given in the King's Courts, the Parties be made to come upon grievous Pain, i. e. by *Subpœna*, to make new Answers thereunto, to the great Annoyance of the Parties, and in Subversion of the Common Law; It is ordain'd, that after Judgments be given in the King's Courts, the Parties and their Heirs be thereof quiet until the Judgment be avoided by Attaint or by Error, if there be any Error, as it hath been used by the Law in the Time of the King's Progenitors.

And

And see the Observation and Inferences made upon the Statute in *Doctor and Student*, Lib. 1. Cap. 18.

Dr. and Stud.
15 H. 6. c. 4.

Note also the Stat. 15 H. 6. Cap. 4. which enacts, That whereas divers Persons have been greatly grieved by Writs of *Subpœna* purchased for Matters determinable by the Common Law of this Land, to the great Damage of such Persons so vexed, and in Subversion and Impediment of the Common Law, the King wills, That the Statutes thereof made, shall be kept according to the Effect of the same, and that no Writ of *Subpœna* be granted, till Surety be found to satisfy the Party so grieved and vexed for his Damages and Expences, (if so be the Matter cannot be made good which is contain'd in the Bill) And *Quere*, Whether the enacting Part of this Statute does answer the Abuse set forth in the Preamble, and *vide* Stat. 37. E. 3. c. 18. & 17. R. 2. c. 6. &c. *ante* p. 4. And see the Book Cases in 4 H. 7. fo. 4, & 5. 42. Aff. 15. 12 E. 3. Bro. Jurisdiction, 102. 39. E. 3. 14. Bro. Judgment, 13. 33 H. 6. 37. H. 6. 13, 14. Fitz. Barr. 75. Bro. Conscience, 4, &c. 9 E. 3. 53, b. 22 E. 4. 37. 2 R. 3. 9. 10 H. 7. 4. 27 H. 8. 15, 16. 8 E. 4. 66. 11 E. 4. b. 9, &c.

Quere

Note, 'Tis said this Court will not retain a Suit by Note. *English Bill*, unless it be for a Matter of 10*l.* Value, except in Cases of Charities, nor under the Value of 40 *s.* per *Ann.* in Lands; except it be for a Rent-Service, which, tho' never so small, may be retained here; because the Land out of which it is paid, being of Value, may escheat.

C H A P. II.

Of the Office of Lord Chancellor, its Antiquity and Authority here in England; and of the other Officers and Attendants on this Court.

Lord Chancellor the Supreme Judge.

THE Lord Chancellor, or Lord Keeper, being the Supreme and only Judge in this Court; for all Orders and Decrees in Matters of Equity here are entered as made *per Cancellarium* or *per Curiam*, tho' pronounced by the Master of the Rolls or any of the Judges (they being in that particular only the Chancellor's Substitutes or Deputies) it may be necessary in this Chapter to give some Account of the Antiquity and Authority of this great Officer here in England.

His Antiquity.

Ingulph. in vita Edwardi senioris, &c. Anno 920.

As to his Antiquity, *Ingulphus* the Abbot of Croyland is express, That King *Edward* the Elder, about the Year 920, made *Thurketil*, a Predecessor of the same Abbot, his Chancellor, *ut quacunque Negotia Temporalia vel Spiritualia Regis Judicium expectabant, illius (Thurketilli) Consilio & Decreto (Nam tanta fidei & tam profundum Ingenium tenebatur) omnia tractarentur & tractata irrefragabilem sententiam sortirentur.* Which shews not only the Antiquity, but also the absolute Power and Authority of this Chancellor in Decreeing such Causes as were brought by Appeal to the King himself; and therein he seems to have the King's Conscience or Judgment, both in Spirituals and Temporals, delegated to him. And the same *Ingulphus* says, He also held this Office during the Reign of three of K. *Edward's* Successors, viz. K. *Athelstane*, K. *Edmond*, and K. *Edred*, who died in the Year 955. So that he must have been Chancellor about 30 Years:

955.

Ibid. in vita Ethelredi, Anno 978.

Afterwards in the Time of K. *Ethelred*, who began his Reign Anno 978, the Chancellorship was divided between three, viz. the Abbots of *Ely*, *St. Austins* in *Canterbury*, and of *Glastonbury*, to be exercised by them alternately; *Rex Ethelred statuit & concessit quatenus Ecclesia*

Ecclasia de Ely extunc & semper in Regis Curia Cancellarii ageret Dignitatem, quod & aliis, viz. Sancti Augustini & Glasconia Ecclesiis constituit, ut Abbates istorum Cœnobiæ vicissim assignatis succedendo Temporibus Annum trifariè dividerint: So that the Abbot of Ely, or some Monk deputed by him, exercised the Office from the 1st of February for four Months yearly, and the other two of St. Austins and Glasfenbury made up the twelve Months.

And Mr. Selden in his Discourse of the Office of Lord Chancellor, is of Opinion, That in the Time of King Ethelbert, who began his Reign Anno 860, one Augemandus bore this Office: for that in the Charter of Endowment of the Church of Canterbury, among the Earls or Judges that signed it (for every Earl had then Judicial Power) occurs these Words; *Ego Augemandus Referendarius subscripsi;* where he thinks the Word *Referendarius* may well stand for *Cancellarius*; for that both those Words, as they are used in the Code, and Novells, and in the *History of the Declining Empire*, signify an Officer who received Petitions and Supplications to the King, and made out his Writs, Orders and Mandates thereupon. *Vide ante pag. 2.*

These Instances are sufficient to shew the Mistake of those who begin the Name and Office of Chancellor with the Conquest; and I shall add only one more, but of unquestionable Authority. In the Charter or Patent granted by King Edward the Confessor to the Church of Westminster, after the King, Bishops, Abbots and others had signed it, comes this, viz. *Ego Rembaldus Cancellarius subscripsi;* and all ancient Historians agree this *Rembaldus* to be a Person immediately attendant upon the Person of the King, and not an Archbishop or Bishop's Chancellor, as some of late have suggested.

As for the Chancellors under 1 W. I. and since, I shall not mention them in this Place, they may be found in Sir William Dugdale's *Chronica Series* at the End of his *Origines Juridicales*; or in Mr. Selden's *Treatise of the Lord Chancellor of England*: Only I shall here insert some Testimonies of ancient Historians touching this Office and the Great Seal of England; whereof one saith, *Cancellarii Dignitas est ut Secundus* (for the chief

Temp. Ethelberti,
Anno 860.

Temp. Ed. the Confessor.

Mss. Westm.
Temp. Hen. 2.

chief Justice was *Primus*) à Rege in Regno habeatur; ut altera parte Sigilli Regii quod ad ejus pertinet custodiam propria signat Mandata; ut Capella Regia in illius sit Dispositione & Curi; ut vacantes Archiepiscopatus, Episcopatus, Abbatias & Baronias cadentes in manus Regis suscipiat & conservet; ut omnibus Regis Consiliis, etiam non vocatus, accedat, &c.

Gervasius Til-
burienfis, lib. 1.
cap. 7.
Temp. H. 2.

And another Author writing about the same time says, *Cancellarius sicut in Curia Regia, sic ad Scaccarium magnus est; adeo ut sine ipsius Consensu vel Consilio nihil magnum fiat, vel fieri debeat: verum hoc habeat Officium dum residet ad Scaccarium; ad ipsum pertinet Custodia Sigilli Regii quod est in Thesaurio, sed inde non recedit, nisi cum Præcepto Justiciarii (i. e. the Chief Justice of England, who was then his Superior) ab inferiori ad superius Scaccarium à Thesaurario vel Camerario deferretur ad explendum solum Negotia Scaccarii; quibus peractis in Loculum mittitur, & Loculus à Cancellario consignatur, & sic Thesaurario traditur custodiendus: Item cum necesse fuerit, sic signatus sub omnium oculis Cancellario offertur, nunquam ab ipso vel ab alio alias offerendus. Item ad ipsum pertinet Rotulorum qui sunt de Cancellaria Custodia per suppositam personam.*

The Great
Seal under
the Custody
of the Chief
Justice, Treas-
urer and
Chancellor.

From which Passage may be observ'd, That the Chancellor at this Time was of great Authority in the Exchequer, but inferior to the chief Justice. 2dly, That the Treasurer had the Custody of the Great Seal, but sealed up in a Chest in the Treasury with the Chancellor's own Seal, 3dly, That it could not be brought thence into the Exchequer by the Treasurer or Chamberlain, but by the Chief Justice's Warrant, so that the Chief Justice, Chancellor and Treasurer seem at this Time to have been Cheques on each other touching the Custody of the Great Seal; which by *Mai. Paris* is call'd *Sigillum Regni*: For it was the wise Caution of Antiquity never to commit the Custody of the *Insignia* of so great a Trust to the Person who was to exercise it, but only during the publick Execution of that Trust.

Vice-Chan-
cellor.

And I am of Opinion, that even in the Time of the Saxons, there were Vice-Chancellors or Keepers of the Seal as well as Chancellors, the former having the Custody of the Seal, but not the Power to use it; and the

the latter having the Power of using it, were not permitted to have the sole Custody of it; and such a Keeper or Vice-Chancellor seems to be that Syward who in the Time of the Confessor sign'd a Charter thus, *Ego Sywardus Notarius ad vicem Rembaldi Regis Dignitatis Cancellarius subsignavi*; and several others in our Histories are called *Vicecancellarii*, whose Office was to keep the Greal Seal, as *Matt. Paris* says, *Qui Custodiam Sigilli Regii acciperent, Cancellarii Vices acturi & Officium*.

I confess, if their Opinion be true that hold, there were no Deeds sealed before *W. 1.* there could be no Lord Keeper, in its proper Sense, before there were Seals in Being. But I think it has been prov'd beyond Dispute by *Mr. Rymer*, and others, That the Charters or Grants both of *Saxon* and *Danish* Kings were sealed long before the Time of *W. 1.*

Keepers of
the Seal.

And I think it as plain that from the reputed Conquest to the 23d of *H. 3.* the Office of Keeper of the Seal was distinct from that of the Chancellor; and there seems to be a great Difference in their Election or Creation, as well as in their Power and Authority: For whereas the Keeper was ever solely at the Nomination of the King, 'twas otherwise of the Chancellor, who often was elected or nominated by the Parliament. Also whereas the Chancellor was sworn at his Entrance into Office, the Keeper never was; and the Reason was, for that the Chancellor had a Judicial Power, the Keeper only Ministerial, &c.

Distinct from
the Chancellor.

And therefore we find, that in the Reign of *H. 1.* when *Randolph* was made Chancellor, as is supposed, by Consent of the Kingdom, one *Richard* the King's Chaplain was substituted as Keeper of the Seal under him. *Vide Hen. Hunt, fo. 218. b. and Flores Hist. in Anno 1112. in Bibl. Cotton, fo. 4.* And 'tis evident, *Walter de Gray* was Chancellor during the whole Reign of King *John*, and yet *Richard de Marisco*, call'd in the *London Charter*, *Richard Harrister*, was Keeper of the Seal. But note, Historians often confound Chancellor and Keepers one with the other.

Temp. H. 1.

'Tis true, sometimes the Offices of Chancellor and Keeper were united in one Person, who then was both a Judge and a Minister; and this was the Case of

Temp. Johannis
Regis.

Temp. H. 3.

Two Lord
Keepers, &c.

Offices of
Chancellor
and Keeper
united.

Ralph Nevil, who being, 11 H. 3. made Chancellor for Life by the Parliament, the King afterwards, 15 H. 3. gave him the Custody of the Great Seal; but Anno 22. H. 3. the King took away the Seal by Force from him, and gave the same to Geofry the Templar and John Lexington: But the King could not deprive him of his Judicial Authority, for he continued Chancellor till his Death. So that in this King's Time there was a Lord Chancellor and two Lord Keepers *uno & eodem instanti*. Vide Matt. Paris 474.

And see Mat. Westminster, Anno 45. H. 3. his Censure, *Quod Rex constituit Walterum de Merton Cancellarium inconsulto Baronagio*; and the ancient Entries generally are (*Talis*) *Cancellarius*, or *in Cancellarium Anglia electus est*, or *à Baronagio nominatus*, or *in pleno Parlamento*, or *per Regem & Parliamentum constitutus*: whereas the Lord Keeper's Authority is always express'd by the Delivery of the Great Seal, viz. (*Tali Die*) *Sigillum fuit ei liberatum à Rege*, &c.

I confess oftentimes the same Person that was elected Chancellor, is said to have the Seal delivered to him at the same Time by the King: And Mr. Selden in his Discourse of the Chancery, p. 23. is of Opinion, That these Offices were united by Act of Parliament the same Year that Chancellor Nevil died, i. e. 28 H. 3. thus, viz. *Si aliqua interveniente occasione Dominus Rex abstulerit Sigillum suum à Cancellario, quicquid fuerit interim sigillatum, irritum habeatur & inane, deinde Cancellario fiat restitutum*.

But that Act I believe respected only the Chancellor Nevil, who having the Custody of the Great Seal as well as Chancellorship committed to him by Consent of King and Parliament, yet the King afterwards violently took it from him, and disposed of it to other Persons till the 28th of his Reign, when he seems to have been reconciled, and restored the Seal to him, and thereupon that Act passed.

For in the Reign of succeeding Kings we find those Offices often divided between several, and sometimes conjoined; and sometimes a Lord Keeper only had both Powers in him; but no absolute Conjunction or Declaration that the Officers were the same was made till the Time of Sir Nicholas Bacon Lord Keeper, when by

by the Stat. 5 Eliz. cap. 18, 'tis enacted, *That the Common Law of the Realm is, and always was, and ought to be taken, That the Keeper of the Great Seal of England for the Time being, hath always had, used and executed, and of Right ought to have, use and execute, and from henceforth may have, perceive, take, use and execute, as of Right belonging to the Office of the Keeper of the Great Seal of England for the Time being, the same, and like Place, Authority, Pre-eminence, Jurisdiction, Execution of Laws, and all other Customs, Commodities and Advantages as the Lord Chancellor lawfully used, had, or ought to have, use and execute, as of Right belonging to the Office of Lord Chancellor, to all Intents, &c. as if the same Keeper of the Great Seal were Lord Chancellor of England.*

4 Inst. 87.

Stat. 5 Eliz.

c. 18.

So that a Lord Keeper has now all the Powers, Privileges, &c. of a Lord Chancellor; and though formerly there are Instances of some Grants of this Office by Letters Patents, yet he now receives his Authority by the Delivery of the Great Seal only, without any Grant or Patent for the same, there being only an Entry made in the Close Rolls in Chancery of the Day and Time he received the same, and who were present.

The Lord Chancellor or Lord Keeper in his Judicial Capacity hath divers Assistants or Associates, viz. the Master of the Rolls and the Judges of the Common Law, whom he often deposes in his Absence; also the Masters in Chancery, some of whom constantly sit in Court on the same Bench with him, though at a convenient Distance, And besides these, if it be in Matters of Difficulty, or wherein the Common Law is concerned, he often calls one or more of the Chief Justices and Judges to assist him in giving his Decree, though in such Cases they can only give their Advice or Opinion, but have no Share of the Judicial Authority, and therefore he often decrees contrary to their Opinion. *Vide the Case of the Duke of Norfolk.*

His Associates and Assistants.

The Master of the Rolls is at this Day esteemed a Judicial Officer of this Court; for besides what he does as Assistant to, or Associate with the Lord Chancellor when present, or as Deputy to him when absent; he also has certain Causes assign'd him to hear

Master of the Rolls.

Of the Office of Lord Chancellor, &c.

and decree, which he usually doth on certain Days appointed, being assisted by one or more Masters in Chancery, either at his own House, or the Chapel of the Rolls adjoining; and all such Orders and Decrees as are made by him, are drawn up and entered as made *per Curiam*.

Not a Judge
without Special Commission.

But it is said the Master of the Rolls hath no lawful Authority to be a Judge in Chancery in the Absence of the Chancellor, nor to hear and determine Causes at his own House or the Chapel of the Rolls, as he commonly does, unless he is thereunto authorized by special Commission under the Great Seal; much less may any of the Masters in Chancery pretend to any Authority as Judges in that high Court without such Special Commission; and that the first Precedent of such Commission was when Cardinal Wolsey was Chancellor. *Vide Co. Preface to the 3d Report, fo. 5. a.*

How Judgments are entered.

And that when the Judges are Assistants to the Lord Chancellor in his ordinary Jurisdiction, *viz.* when he proceeds according to the Rules of the Common Law, as in Cases of *Scire Facias's*, to repeal Patents, &c. then the Judgment is to be entered in this Form, *Per quod de Advifamento Justiciar', &c. considerat' fuit tunc & ibidem, &c. Vide 8 Co. 23. a.* But when he proceeds according to his absolute Power, *i. e.* in all Matters of Equity, then though assisted by the Judges, the Judgment is entered as given *per Cancellarium*; and if it be by the Master of the Rolls, then 'tis entered as *per Curiam*.

His Offices,

Also by Vertue of his Office he is the Chief of the Masters in Chancery, and chief Clerk of the Petty-Bag, and his Title in his Patent is *Clericus Parva Bagae, Custos Rotulor', & Custos Domus Conversor'*, the House where he resides being called *Domus Conversor'*, because it was formerly appropriated to the Habitation of such *Jews* as were converted to Christianity, and which was afterwards by King *Ed. 3.* on his banishing the *Jews*, applied to the keeping of the Rolls and Records in Chancery, and therefore called, *The Rolls*.

House,

Name.

Indeed anciently he was called *The Clerk of the Rolls*, as in *Fortescue, cap. 24, &c.* and so is he called in the

the Stat. 12 R. 2. c. 22. and by other Statutes, but by none *Master of the Rolls*, till 11 H. 7. c. 18. and yet *ibid.* cap. 15. he is called by the Name of *Clerk of the Rolls*, and by that Name takes an Oath in open Court, which Oath was appointed by Stat. 18. E. 3.

" You shall swear, That well and faithfully you Oath.
 " shall serve our Sovereign Lord the King and his
 " People in the Office of Clerk of the Rolls in Chan-
 " cery, to which you be attitled; and you shall not
 " assent to, or procure the King's Disherison nor *Vide Keble's*
 " Damage to your Power; nor shall you do, or pro- *Stat. 18 E. 3.*
 " cure to be done any Fraud to any Man's Wrong, *fo. 111.*
 " nor any Thing touching the Keeping of the Great
 " Seal; and you shall lawfully counsel in Things that
 " touch the King when you shall be thereunto re-
 " quired; and the Counsel you shall know touch-
 " ing the King, you shall conceal; and if you know
 " the King's Disherison, perpetual Damage or Fraud
 " to be done upon the Things which touch the
 " Keeping of the Seal, you shall put your lawful Pow-
 " er to repress and amend it; and if you cannot do the
 " same, you shall certify the Chancellor or others
 " which may do the same to be amended to your In- *Vide post. p. 31,*
 " tent. *As God you help, &c.* *32.*

And by the said Stat. 12 R. 2. he is numbred amongst *Stat. 12. R. 2.*
 the chiefest Officers and Magistrates of the Kingdom *c. 2.*
 by the Name of *Clerk of the Rolls*, and before the Justi-
 ces of either Bench, viz. that of the Chancellor,
 Treasurer, Privy-Seal, Steward of the King's House,
 Lord Chamberlain, Clerk of the Rolls, &c. shall be
 called to the Naming of Justices of the Peace, She-
 riffs, &c. and be sworn to the same faithfully and
 without Affection.

And by Virtue of his Office he is a General Con- *Conservator*
 servator of the Peace throughout the Kingdom, and *of the Peace.*
 his Name is accordingly inserted in all the Commis-
 sions of the Peace for the several Counties. But 'tis said
 he taketh Recognizances, and issueth out Process of the
 Peace, &c. not as incident to his Office, but by Pre-
 scription. But *Quere* if this be not incident to his
 Office as Justice of Peace. *Vide Lambard's Just. lib. 1.*
fo. 12. *C 4.* *And*

Stat. 14. H. 8.
c. 8.

And by a *Proviso* in the Stat. 14. H. 8. he hath the giving of the Offices of the Six chief Clerks in the Chancery.

Stat. 5 & 6.
Ed. 6. c. 16.

And *note*, by the Act against Buying and Selling of Offices, there is no *Proviso* or Exception for the Master of the Rolls; therefore as to these Offices *Caveat Emptor*. *Vide* 3 Rep. in fine, and 2 Cro. 269. That the Stat. extends to Offices in Equity as well as at Common Law.

He is likewise at this Day Keeper of all Records, Judgments, Sentences and Decrees given in the Chancery.

Masters in
Chancery.

The other Assistants to the Lord Chancellor are the Twelve Masters in Chancery; of these the Master of the Roll- is chief, as aforesaid. These ought to be either Barristers at Common Law, or Doctors of the Civil Law, and their Business is to sit in Court with the Lord Chancellor or Master of the Rolls, and to take Notice of such References as are made to 'em, in order to be reported to the Court, which usually are Matters of Account, Matters of Practice, or the State of the Proceedings; and to make their Report accordingly: Besides which, they take or swear Affidavits, and sometimes Deeds are acknowledged, and Recognizances are entred into before them. *Vide* of these Officers, *Fleta lib. 2. cap. 13.*

Clerk of the
Crown.

Next to these may be placed the Clerk of the Crown in Chancery: This is an Officer wholly Ministerial, and is not employed in any of the Proceedings of Equity here; for he is particularly appointed as chief Curator or Guardian of such Matters of the Crown as are transacted in this Court: And therefore by himself or Deputy is continually to attend his Lordship for forming special Orders, Commissions, and Acts of State wherein the Crown is concerned, either ordinary or extraordinary, *viz.* Commissions of the Peace, of Lieutenants of the Counties, of Justices of Assizes, Oyer and Terminer, Goal-Delivery, *Nisi-Prinus*, &c. with the Writs of Association, *Dedimus Potestatem*, &c. thereupon. He also makes out all General and Special Pardons granted either in Parliaments or at Coronations, or otherwise, and Writs of Allowance thereupon. He likewise makes out all the Writs for elect-
ing

ing of Members to Parliament, and into his Office all the Returns of such Writs are to be made, and he often attends the House of Commons to amend such Returns of Members, as by their Orders are to be amended, &c. He also makes out Writs of Execution upon Bonds, of the Nature of Statute-Staples, forfeited upon the Act of 23 H. 8. c. 6.

The Six Clerks are principally concerned in Matters of Equity, their Office is kept in *Chancery-Lane*, over-against the *Rolls*, wherein all Proceedings by way of *English Bill* and Answer unto the very Decree, and in some Cases after the Decree, are transacted and filed: Also out of this Office issue some Patents that pass the Great Seal, as Pardons of Men for Chance-medley, Patents for Ambassadors, Commissions for Bankrupts, and some others. And all these Matters are transacted by their Under-Clerks in the same Office, each whereof has a Seat there, and whereof each Six Clerk has a certain Number as depending upon, or belonging to his Office, viz. about 10 or 12.

Six Clerks.

Under Clerks.

The Cursitors of the Court, who were incorporated by Queen *Elizabeth*, by the Name of the Four and Twenty *Cursitors*, amongst whom the Business that lies in the several Shires is severally distributed. These make all Original Writs in the Chancery, which are returnable in the Common Pleas, and all Writs of Entry and Covenant.

Cursitors.

The Register is a Place of great Note in this Court, and hath several Deputy-Registers under him, who sit in Court by their Turns, and take Notice of all Orders and Decrees made in Court, and accordingly draw up the Orders, which you must enter, and then have a Register's Hand to it; and in that Office likewise they file the Reports of the Masters.

Register and his Deputies.

Then there is the Master of the *Subpœna*-Office, and Clerk of *Affidavits*, where you file such *Affidavits* as you use in Court, for without filing they are not admitted:

Subpœna and Affidavit Office.

The three Clerks of the Petty-Bag (of which the Master of the *Rolls* is chief) who have many Clerks under them, and these Clerks have much Variety of Business that goes through their Hands, and requires very much Knowledge and Experience for the managing of it.

Petty-Bag.

This

- Summons to Parliament.** This Office hath the making out of all Writs of Summons to Parliament, all Patents of Customers, Gagers, Controllers and Alnegers, all *Conge d' Es-lie* for Bishops, all *Liberates* upon Extent of Stat. Staples, the Recovery of Recognizances forfeited, and all *Elegits* upon them.
- Pleadings.** To this Office all Offices that are found *post Mortem*, are brought to be filed. And here are entred all Pleadings of the Chancery concerning the Validity of any Patent, or other Thing whatsoever which passeth the Great Seal.
- In Latin.** And these Pleadings being according to the Course of the Common Law, are in *Latin*, although most of the rest of their Proceedings, *i.e.* on the Equity-side, are in *English*. And,
- Deeds.** If any Question arise about the Acknowledgement of any private Deed between Subjects, which is acknowledged in Chancery before the Lord Chancellor, Lord Keeper, Master of the Rolls, or any of the Masters in Chancery; and all Statutes and Recognizances taken before any Officers of this Court, to that Purpose deputed, are here prosecuted and transmitted hither.
- Statutes, &c.** Also all Suits for or against any Person privileged in this Court, are proceeded in this Office. And lastly, it is as a Hand whereby to transmit divers Things from the Riding-Clerk, and the Inrollment-Office, to the Chapel of the Rolls. See more hereof in the Chapter Of Proceedings according to the Course of the Common Law.
- Privileged Persons.** The Examiners are Officers of this Court, who take the Depositions of Witnesses, and are to examine them, and to make out Copies of the Depositions.
- Enrolments.** There are likewise Clerks of the Rolls who sit constantly in the Rolls to make Searches for Deeds, Offices, &c. and to make out Copies.
- Examiners.** The Usher of the Court, who hath the receiving and Custody of all Monies ordered to be deposited in Court, and payeth it back again by Order.
- Clerks of the Rolls.** The Serjeant at Arms, who carrieth the Mace before the Lord Chancellor or the Lord Keeper, and to whom any Persons standing in Contempt, are brought up by his Substitutes as Prisoners.
- Usher.** The Warden of the Fleet attends likewise this Court to receive such Prisoners as stand committed by the Court.
- Serjeant at Arms.**
- Warden of the Fleet.**

The Clerk of the Hanaper, or Hamper, is also an Clerk of the Officer of this Court, who of old was sometime called *Warden of the Hamper*; His Office is to receive all Things due to the King for the Seal of Charters, Patents, Commissions and Writs; as also such Fees as are due to the Officers for enrolling and examining the same.

He is obliged to attend the Lord Chancellor or Lord Keeper every Day in Term-Time, and at other Times when the Seal is open, having with him Leathern Bags, wherein are put all Writs, Patents, Commissions, &c. after they are sealed with the Great Seal; which Bags being sealed by the Lord Chancellor or Keeper with his private Seal, are delivered by this Officer to the Controller of the Hamper to be disposed of by him as his Office requireth. *Vide infra*. His Office.

See in *Fitzherb. Nat. Brev. Tit. Disceit*, fo 95. what Fees were payable into the Hamper upon Originals in Debt, or for Writs of Entry and covenant upon any Alienation. And that for every Writ of a Plea of Land which is a *Præcipe quod reddat*, (unless Writs of Right Patent) where the yearly Value of the Land is five Marks, a Fine of 6 s. 8 d. shall be paid into the Hamper, and so according to that Rate for any greater yearly Value. Fers or Fines paid for Originals.

But now the Course is, for every Original Writ in which the Debt or Damage amounts to more than 40 l. to pay a Fine of 6 s. 8 d. into the Hamper; and so from 40 l. to 100 Marks; and if 3 s. and 4 d. more, *id est*, 10 s. in the whole, from 100 Marks to 100 l. And so 6 s. 8 d. for every 100 Marks, and 10 s. for every 100 l. But unless the Debt or Damages shall exceed 40 l. no Fine is to be paid.

And *Vide Bro. Tit. Fine per Contempt*, 50. That if the Writ be abated, the Plaintiff shall have a new Writ for the same Fine, which they call a *Finem fecit*. But *quare* if the first Writ be returned and filed, whether a new Fine is not to be paid. And, *note*, the Fine for an Affize is 40 s. 7 Co. 1. a. Writ abated. Affize.

And see the Case cited in 5th Coke's Reports. 43 b. In 23 H. 8. one Grey and Elizabeth his Wife being seized in Right of the said Elizabeth of the Manor of Em poles in Westhall in Com. Suffolk levied a Fine there- Fine levied.

Of the Office of Lord Chancellor, &c.

of to *Nicholas Bohun*, and his Heirs, by the Name of the Manor of *Empoles*, and a great Number of Acres of Land, &c. which Manor, Lands, &c. were valued at 20 Marks *per Annum*; so that the Fine in the Hamper was 26 s. 8 d. which was indorsed on the Writ of Covenant. And always the Fine *pro Licentia Concordandi* (which is called the *King's Silver*, or the *Post-Fine*) is the Fine in the Hamper, and half the said Fine more, and so the Fine in the Hamper in that Case being 26 s. 8 d. the half of that is 13 s. 4 d. which in the whole amounts to 40 s.

Note.

Contrtoller
of the Hamper.

The Controller of the Hanaper is also an Officer in this Court daily attending likewise on the Lord Chancellor or Keeper in the Term-Time and Days appointed for Sealing.

His Office.

His Office is to take all Writs, or whatsoever else shall pass the Seal from the Clerk of the Hamper (as above is mentioned) sealed up in Leathern Bags; which he afterwards opens, and counts the Number of the Writs, Patents, Commissions, &c. therein, and takes special Notice of the Natures, Kinds, Qualities and Effects of what he so receives, and enters the same in a Book he keeps for that Purpose; together with all Duties belonging to the Queen, or such Officers as are concerned therein, and then chargeth the Clerk of the Hanaper with the same.

Clerk of the
Faculties.

Touching the Clerk of the Faculties, it is provided by the *Stat. 25 H. 8. cap. 20.* (entitled, *An Act for Exoneration of the King's Subjects from Exactions and Impositions heretofore paid to the See of Rome, &c.*)

“ That no Manner of Dispensations, Licences, Faculties, or other Preepts or Writings hereafter to be granted to any Person or Persons by Virtue or Authority of this Act by the said Archbishop or his Commissary, being of such Importance, that the Tax for the Expedition thereof at *Rome* extended to the Sum of 4 l. or above, shall in any ways be put, until the same Licence, Dispensation, Faculty, Preept or Writing, of what Name or Nature soever it be, be first confirmed by the King, his Heirs and Successors, Kings of this Realm, under the Great Seal, and enrolled in the Chancery in a Roll, by a Clerk appointed for that Purpose,

And

And in the End of the same Statute, amongst the Fees to be taken and divided, it is said, " That if the Tax be under 40 s. and not under 26 s. 8 d. the same Tax shall be divided into two Parts, whereof one Part shall be to the King, his Heirs and Successors, deducting thereout 2 s. for the Clerk of the Chancery for his said Pains; and the other Part shall go to the said Archbishop and his Officers; which said other Part shall be divided into two Parts, whereof the Archbishop shall have one, and his Commissary or Register shall have the other, equally to be divided between them

" And if the said Tax be under 26 s. 8 d. and not under 20 s. the same shall be divided into two Parts, whereof the King, his Heirs and Successors shall have one Part entirely, abating 2 s. for the said Clerk of the Chancery; and the Archbishop and his Officers shall have the other Part, to be divided into three Parts, whereof the said Archbishop to have one Part, his Commissary the second Part, and his Register the third Part.

" And if the Tax be under 20 s. the same shall be taken to the Use of the Commissary, or Clerk of the said Archbishop, and the Clerk of the Chancery, to be equally divided between them.

Another Officer dependent on the Lord Chancellor, is the *Clerk of the Presentations*; concerning which Office we read, That the Lord Chancellor, by Virtue of his Office, shall present to all the King's Churches or Benefices, which be under the yearly Value of 20 Marks, and be in the King's Gift in the Right of the Crown, and whereof the King is in such a Manner Patron. Clerk of the Presentations.

But if the King have them by another collateral Title, then the Chancellor or Keeper shall not have those Presentments, but the King shall have them; and yet those Presentments must pass under the Great Seal. *Plow.* 528. 38 E. 3. 3 F. N. B. 35 K.

But it appears by 22 E. 4. 18. that it belongs to the Chancellor *virtute Officii*, to present to all the King's Churches under the yearly Value of 40 Marks: And no doubt the Chancellor's Authority in this Behalf is enlarged.

Of the Office of Lord Chancellor, &c.

enlarged by the Grants and Letters Patents of several of our Kings.

It also belongs to the Lord Chancellor, or Lord Keeper, to visit all the Hospitals which be of the King's Foundation, or which were founded by any of his Progenitors; and so also the Free Chapels of the King, or of his Predecessors; for no Ordinary shall visit them, but only the Chancellor; and if the Ordinary offers to visit them, a Prohibition lies. *F. N. B.* 42. a.

Clerk of Appeals.

The Clerk of the Appeals, is an Officer appointed by Virtue of the *Stat. of 25 H. 8. cap. 19.* by which (*inter alia*) it was enacted, That for Lack of Justice at or in any of the Courts of the Archbishops of this Realm, or in any of the King's Dominions, it shall be lawful for the Parties grieved to appeal to the King's Court of Chancery, and that upon every such Appeal, a Commission shall be directed under the Great Seal, to such Persons as shall be named by the King's Highness, his Heirs or Successors, even like as in Case of an Appeal from the Admiral-Court, to hear, and definitively to determine such Appeals.

Clerk of the Patents.
Grants and Patents of the King must be recorded.

The Clerk for inrolling Letters Patents, is an Officer by Order of the Common Law; for though it be not expressed in any Statute, that the King's Patents shall be inrolled, yet so much is implied for the King's Benefit, as is said before in the Title of the Master of the Rolls; for his Grants must appear by Record, which must remain in his Custody, *viz.* in the Court, which cannot be, except they are inrolled.

And in divers Statutes Mention is made, that the Exemplifications of Patents shall be made, which cannot be, unless the Patents were inrolled. *Vide Crompton Jurisdic. del Courts. Tit. Exchequer 188.*

Besides the above-named, there are other Officers belonging to this Court, whose Power being granted by the Chancery's Commission or Letter, they are to attend the Chancellor or Keeper for particular Purposes, and on particular Occasions, such are the Sealer, the Chase-wax, &c.

Others are granted by Patent from the Prince for other particular Purposes; such are the Clerks of the Subpena-Office, so the Clerks for making the *Diem clausit*

clausit extremum, writing Licences of Alienation, Writs of Licences of Protection, and many others of the like Nature,

Some are ordained by Parliament to be nominated and appointed by the King's Letters Patents; as the Writer and Inroller of Confirmations of all such Licences, Dispensations, &c. as shall be brought into Chancery under the Archbishop of *Canterbury's* Seal, &c.

All the Masters, Clerks and Officers of this Court ought to take an Oath for the due Execution of their respective Offices; and therefore the *Stat. 13 Ed. 3.* has not only appointed an Oath to be taken by the Masters of the Rolls, which see before, *Page 23.* but it has also made an Addition to the said Oath for such other Clerks in Chancery as are therein called *Clerks of Course*: For which see the said Statute, and with little Variation in the Sense, is of later Times taken in these Words, *viz.*

Oaths to be taken by the Master and Clerks.

" You shall swear, That well and truly you shall
 " serve our Sovereign Lord the King and his Peo-
 " ple in the Office of one of the Masters in Chancery, to the which you are called: You shall not as-
 " sent nor procure the Disinheritance, nor (perpetual)
 " Damage of the King to your Power: No Fraud
 " shall you do, or cause to be done wrongfully to a-
 " ny of his People, nor any Thing that toucheth the
 " Seal; and lawfully you shall counsel the Things
 " that toucheth the King, when you shall be there-
 " unto required; and the Counsel that you shall
 " give touching his Majesty, you shall not disclose;
 " and if you know any Thing that toucheth the Dis-
 " inheritance or Damage of the King, or Fraud to be
 " done about any Thing that toucheth the Keeping of
 " the Seal, you shall put your lawful Power it to re-
 " dress and amend; and if that you cannot do it, you
 " shall advise the Lord Chancellor, or Lord Keeper of
 " the Seal, or other which may amend the same, to
 " your Power. So help you God, and by the Contents of
 " this Book. *Vide ante pag. 23.*

A Master in Chancery's Oath.

This

A Deputy-Master of the Rolls.

This Oath was taken by *William Lambard Esq;* when he was made a Master in Chancery, and also in the Year 1597. on his being made Deputy-Master of the Rolls by the Lord Keeper *Egerton*; for *Egerton* who had been Master of the Rolls, 10 April 36 *Eliz.* was on the 6th of May 38 *Eliz.* made Lord Keeper, and kept both Offices in his Hands till 27 May, 39 *Eliz.* 1597. when he appointed *Lambard* to be his Deputy-Master of the Rolls by a Warrant in the following Form, viz.

Mr. *Lambard's* Deputation.

“ Be it known, that I *Thomas Egerton* Knt. Lord Keeper of the Great Seal of *England*, and Master of the Rolls of her Majesty's Court of Chancery, have constituted and appointed *William Lambard Esq;* one of the Masters of the said Court, to be my lawful Deputy in and for the Keeping of the House and Messuage commonly called, *The House of the Rolls*, situate in *Chancery-Lane*, in or near the City of *London*; and also in and for the safe keeping and ordering of all the Records, Rolls, Books, Writings, Evidences and Muniments being and remaining, or which should or ought to remain, or to be in Possession or Custody of me the said *Sir Thomas Egerton*, as Master or Keeper of the Records, Rolls, Books and Writings of her Majesty's said Court of Chancery, or by Reason of the said Office of Master of the Rolls: Ratifying and allowing whatsoever my said Deputy shall lawfully do in or concerning the Premises. In witness whereof, I have hereunto put my Hand and Seal, &c. Dated *ut supra.*
Subscribed thus. Tho. Egerton.
And sealed with his Seal of Arms.

Oath appointed by 18 E.3. c. 16.

And, *Note*, after the Statute of 18 E. 3. has recited the Oath to be taken by the Master of the Rolls, (which see before) it proceeds and says: And for the Clerks of Course shall be added this, viz. And you shall not bring, nor to your Knowledge suffer to be brought any Writs which you make out of the Court not sealed thereof to do Execution; nor shall you record any Attorney by Writs or without Writs, without special Licence, if you have not examined the Parties and the other Attorney in pro-
 “ *pria*

“ *pria persona*; neither shall you deliver any Writ
 “ which shall be of Commandment to the Examiners,
 “ nor to the Seal, before the same Writ be sent to you
 “ by the Commander, which thereof hath Power, un-
 “ less it be to the Chancellor, or to one of the Ma-
 “ sters, which command you to make the Writs; and
 “ all the Writs which you shall make, you shall de-
 “ liver them to the Examiners by your own Hands,
 “ or by one Companion which is sworn to the King
 “ (if you your self be out of Court by Reason of
 “ Sickness, or other necessary Cause, so that you can-
 “ not do the same) and that no Writ written of an-
 “ other Man’s Hand be delivered to the Examiners
 “ under your Name as yours; nor no Man shall put
 “ your Name to your Writs but your self. *As God*
 “ *you help, &c.*

*But the Modern Oath of the Office of a Cursitor is
 as follows.*

“ You shall swear, That you shall well and truly Cursitors
 “ serve our Sovereign Lord the King, and his Liege Oath.
 “ People in the Office of Cursitor, whereunto you
 “ are called; and that if you shall know any Fraud
 “ or Falshood procured or intended, to the abusing
 “ of the Great Seal, or to the Damage or Prejudice of
 “ the King, you shall do your best to withstand it;
 “ and that which you cannot of your self help, you
 “ shall discover to the Lord Chancellor or Lord
 “ Keeper of the Great Seal for the Time being: And
 “ besides, to the best of your Power you shall keep
 “ and observe the Ordinances made concearning such
 “ Persons as do or shall write to the Great Seal. So
 “ *help you God, and the Contents of this Book.*

*The Oath to be taken as one of the Clerks serving under
 the Cursitors, is thus, viz.*

“ You shall swear, that you, during the Time of Oath of the
 “ your Service as one of the Clerks of the Cursitors Cursitor’s
 “ Office under A. B. Esq; shall well and truly under Under-
 “ him serve our Sovereign Lord the King, and his Clerks.
 “ Liege People, and that if you shall know any Fraud
 “ or Falshood procured or intended to the abusing of
 “ the

Of the Office of Lord Chancellor, &c.

“ the Great Seal, or the Damage or Prejudice of the
 “ King, you shall do your best to withstand it, and
 “ that which you cannot of your self help, you shall
 “ discover to the Cursitor your Master; and if you
 “ shall find that thereby groweth no sufficient Red-
 “ dress, then you shall discover the same to the Lord
 “ Chancellor, or Keeper of the Great Seal for the
 “ Time being; and besides, to the best of your Pow-
 “ er, observe the Orders made concerning such Per-
 “ sons as do or shall write to the Great Seal. *So help*
 “ *you God.*

The Oath of the Six Clerks in Chancery, is thus, viz.

Oath of the
Six Clerks.

“ You shals swear, That well and truly you shall
 “ serve the King and his People, in the Office of one
 “ of the Six Clerks of Chancery, whereunto you are
 “ now admitted, and well and justly order your self
 “ in the same, and according to your Skill and
 “ Learning, truly counsel them that you shall be re-
 “ tained with; and you shall not assent to any Fraud
 “ or Deceit to be had or done by you, or any other
 “ by your Consent, in any of the King's Records,
 “ whereunto you shall have Recourse; but well and
 “ truly you shall entreat the same; and you shall
 “ not absent your self willingly whereby the King's
 “ Business or any other shall be undone or hindred,
 “ without special Licence of the Master of the Rolls,
 “ or his Deputy, for the Time being. *So help you*
 “ *God, &c.*

The Oath of the Examiners in Chancery, is thus, viz.

Examiner's
Oath.

“ You shall swear, well and truly after your Cun-
 “ ning and Learning to execute and occupy the Of-
 “ fice of one of the Examiners in the King's Court of
 “ Chancery whereunto you are admitted; and you
 “ shall duly, justly, and equally examine their Cau-
 “ ses that shall be committed unto you, without a-
 “ ny Favour or Corruption of any Person or Persons
 “ to be had, or do othe wise than shall of Right ap-
 “ pertain concerning the same; and you shall be
 “ attendant as well to further the King's Business,
 “ as

“ as also the same Causes, from Time to Time as
 “ Need shall require, and you shall not publish or
 “ shew the same *Depositions* to any Person, before
 “ Publication in the Court, without the Warrant of
 “ the same Court. *So help you God, &c.*

The Oath of a Clerk of the Petty-Bag, is thus, viz.

“ You shall swear, That well and truly you shall
 “ serve the King and his People, as one of his Mini-
 “ sters and Clerks in the Office of the Petty-bag, Clerk of the
 “ whereunto you are now admitted; and well and Petty-Bag's
 “ truly order your self in the same according to your Oath.
 “ Learning; and you shall be diligent to further the
 “ King's Business from Time to Time as Need shall
 “ require; and you shall not assent to any Fraud or
 “ Deceit to be had or done by you, or by any by
 “ your Consent in any of the King's Records where-
 “ unto you shall have Recourse, but well and truly
 “ you shall entreat the same. *So help you God, &c.*

*The Oath of a Lord Chancellor or Keeper of the
 “ Great Seal.*

“ You shall swear, That well and truly you shall
 “ serve our Sovereign Lord the King in the Office of
 “ Chancellor, (or, Keeper of the Great Seal) of The Lord
 “ Great Britain, whereto you are admitted; and you Chancellor,
 “ shall do Right to all Manner of People, as well to or Lord
 “ Poor as to Rich, according to the Laws and Usages Keeper's
 “ of this Realm; and truly you shall counsel the Oath.
 “ King, and his Counsel you shall lain, (*i. e. hide*)
 “ and keep; and you shall not know nor suffer the
 “ Hurt, nor disheriting of the King, nor that the
 “ Rights of the Crown be distressed, (*decreased*) by
 “ any Means, as far forth as you may it Let; and if
 “ you may not let it, you shall make it clearly and
 “ expressly be known unto the King with your true
 “ Advice and Counsel (therein;) and that you shall
 “ do and purchase the King's Profit in all that you
 “ reasonably may. *So help you God, &c.*

Method of
the ensuing
Work.

I have inserted the several Oaths aforesaid, for that they do in a great Measure shew the Business and Duty of such Officers as are respectively to take them.

And thus having shewn the Office and Duty of the several Officers, Ministers, and Attendants on this Court. I shall now proceed to shew the Method of preparing, drawing, and filing Bills; as also of taking out *Subpœna's*, and other subsequent Process, as *Attachments*, *Proclamations*, and *Commissions* of Rebellion, with *Superseas's* thereunto. *Vide Cap. 3, and 4.*

And next, I shall distinctly and methodically treat of Appearances, *Admised Potestari*, Answers, Exceptions to Answers, Hearings on Bill and Answer, Pleas, Demurrers, Replications, Rejoinders, and Surrejoinders. Then of Commissions for examining Witnesses, with Interrogatives, and Examinations thereupon; as also Examinations in Court, and *de bene esse*. Next of Depositions, Publications, setting down, and hearing Causes: and then of decretal Orders, Dismissions, Decrees, and of reviving and executing of Decrees.

After which I shall treat of Bills of Review, *Certiorari* Bills, and Bills of Review, Affidavits, Petitions, Motions, Orders, References, Reports, Contempts, Commitments, Injunctions, and Sequestrations, and lastly, a Word touching Suits by or against privileged Persons, as Clerks and Officers, and of Suits in *forma Pauperis*, as also of Infants, *Feme Coveris*, *Non compos*, &c.

C H A P. III.

Of Bills in Equity, and the Method of Filing them in this Court.

Bill in Equity
defined.

Prayer of
Process.
Subpœna.

A Bill in Equity is in Nature of a Declaration at the Common Law, wherein the Complainant is to set forth the Circumstances of his Case for some Fraud, Force, or Injury done to him, praying Relief of the Court, for that he has no Remedy by the Common Law, and also Process of *Subpœna* against the

the Defendant, to compel him to answer the Charge of the Bill; and if it be to quiet the Possession of Lands, or to stay Waste, or Proceedings at Common Law; he therein also prays a Writ of Injunction for that Purpose.

Injunction.

And formerly the Practice was to sue out such Subpœna, and serve it before the Bill was filed; and if the Bill came into the Six Clerks Office at any Time before the third Day at Noon after the Return of the Subpœna, it was regular enough: But this encouraging Persons to be troublesome and vexatious in suing out, and serving Subpœna's, when they never intended to file any Bills against the Defendants; by Reason of drawing Defendants from the remotest Parts of the Kingdom, after a long Attendance, and Expence of Time and Money here, they were usually dismiss'd with small Costs.

Former Practice.

Troublesome and vexatious Defendants.

Therefore it was enacted by Stat. 4 & 5 Anna for Amendment of the Law, cap. 16. That no Subpœna, or any other Process for Appearance, shall issue out of any Court of Equity, till after the Bill is filed with the proper Officer in the respective Courts of Equity (except Bills for Injunctions to stay Wastes or Suits at Law commenced) and a Certificate thereof brought to the Subpœna-Office, or to him who usually makes out Subpœna's, or other Process for Appearance, under the Hand of the Six Clerk, or other Clerk or Officer who usually files Bills in Equity; for which Certificate he shall receive no Fee.

Remedied by the Stat. 4 & 5 Anna, c. 16.

Certificate.

And for the better preventing vexatious Suits in Courts of Equity, 'tis thereby also enacted, That upon the Plaintiff's dismissing his own Bill, or the Defendant's dismissing the same for want of Prosecution, the Plaintiff shall pay to the Defendant or Defendants full Costs to be taxed by a Master-- And 'tis further enacted, That no Copy, Tenor, or Abstract of any Bill in Equity do go with the Dedimus, or Commission for taking the Defendant's Answer; but in Recompence thereof, the sworn Clerks of the Chancery shall take to their own Use the whole Termly Fee of 3 s. 4 d, and also the whole Fee or Fees for all small Writs made up by the said sworn Clerks. Vide post Chap. 5.

Costs on Dismissal of a Bill.

No Copy thereof to go with the Dedimus.

Bill drawn
and engros-
sed on
stamp'd
Parchment.

So that the Method of commencing Suits in this Court being somewhat altered by the said Statute (except in Cases of Bills for Injunctions, as above) you are now in the first Place to get your Bill drawn in Paper, which must be done by some Counsel, or at least perused by him, and his Hand is to be set there-to, and get it engross'd in Parchment; and with the Bill so engross'd, apply to one of the sworn Clerks in the Office, commonly called *the Six Clerks Office*, in *Chancery-Lane*, who are in Number about seventy, to be engrossed, or for Expedition you may do it your self; and *Note*, Each Skin of Parchment whereon your Bill is engross'd, must be stamp'd with a double Twelve-penny Stamp.

Filed and
certified.

Your Bill being thus engrossed, is to be carried by the said sworn Clerk to one of the six Superior Clerks, who have distinct Apartments in the same Office, and he files it for you, and then makes a Certificate, that your Bill is filed, as by the above-mentioned Statute is directed; with which Certificate you are to apply to the *Subpena-Office* in such Manner as will be shewn you in the following Chapter.

Bill to be
dated and
signed.

And the Bill ought to be signed by the said Superior Clerk, and dated the same Day it comes into the Office, which is done by writing on the Margin thereof towards the Top thus, *viz. 10 die Martii Anno 13 Anna Regina. Herne.*

And deliver-
ed to the Six
Clerk.

And ordered that no Six Clerk do presume to antedate any Bill; and that no Under-Clerk do presume to keep any Bill by him, but with the first Opportunity, he is to deliver the same to the Six Clerk, or in his Absence, to his allowed Deputy, to be accordingly filed.

Orders in
Chancery
touching
Bills.

And see the *Orders in Chancery*, p. 114. No Bill, Answer, or other Pleading, shall be said to be of any Record, or to be of any Effect in Court until the same be filed with such of the Six Clerks with whom it ought properly to remain.

How Coun-
sellors ought
to demean
themselves
in drawing
Bills.

And *ibid. pag. 113. &c.* 'Tis ordered, That no Counsellor do put his Hand to any Bill, Answer, or other Pleading, unless it be drawn, or at least perused by himself in the Paper-draught before it be engross'd.

Signing the
Draught, &c.

(which they shall do well for their own Discharge,
to

to sign after Pernal) And Counsel are to take care that the same be not stuffed with Repetition of Deeds, Writings or Records *in hæc Verba*: But the Effect and Substance of so much of them only as is pertinent and material to be set down, and that in brief Terms, without long and needless Traverses of Points not traversible, Tautologies, Multiplication of Words, or other Impertinences occasioning needless Prolixity, to the End the antient Brevity and Succinctness in Bills, and other Pleadings, may be restored and observed: Much less may any Counsel insert therein Matter merely criminal or scandalous, under the Penalty of good Costs to be laid on such Counsel, and paid to the Party grieved, before such Counsel be heard in Court.

Repetitions
and Tautolo-
gies, &c. to
be avoided.

Criminal and
scandalous
Matter to be
avoided.

If there be Matter scandalous in a Bill, a Master in Chancery is to expunge it, and to tax Costs for the Party scandaliz'd; but if on such Reference the Master reports the Bill not scandalous, the Party procuring such Reference shall pay Costs to the Plaintiff for such his Reference. *Vide Orders in Canc. p. 114.*

Scandalous
Matter to be
expunged,
and Costs
to be taxed.

And the Defendant may refuse to answer such Bill, till the Scandal and Impertinence be expunged; nor will the Court permit it to be expunged, but on Motion, and a Certificate that the Costs taxed are paid.

Scandal ex-
punged.

And it sometimes happens, that a Master will certify a Thing to be impertinent and scandalous that he thinks to be *contra bonos Mores*; as where a Counsel in that Part of the Bill which charges a Confederacy, had called the Confederates, *Brethren in Iniquity*, this was certified to be scandalous or impertinent, and the Counsel forced to pay good Costs before the Bill could be amended.

Counsel pay-
ing Costs.

But if there be any Oversight in the Bill which requires Amendment, before the Defendant's Appearance, it may be amended, upon Motion, without paying Costs; *contra*, if amended after Appearance, for then Costs must be paid. *Vide of Costs postea.*

Bill amended.

Bills in Equity are usually brought for such Matters wherein the Plaintiff is remediless at Common Law, and therefore have these or the like Words inserted in them, *Forasmuch as your Orator is utterly remediless in the Premises by the Rules of the Common Law,* &c.

Remediless
at Common
Law.

Affidavit
when to re-
cover Writ-
ings.

If the Bill be to recover Writings, there must be an Affidavit made by the Plaintiff that he had such Writings in his Possession, but has casually lost them, and knows not where they are, unless they are come to the Hands of the Defendant; but if he knows they are in the Defendant's Hands, then the Affidavit may be to that Purpose.

Several Bills
for the same
Matter.

If two several Bills are filed by a Plaintiff against a Defendant, for one and the same Matter, or of the same Nature, one of them will be dismissed with Costs, but where they contain divers Matters, and of several Natures, there the Defendant must answer both.

Where two
can't join.

Nor can two Plaintiffs join in one and the same Bill where their Interests are several. *Hard. 219.*

Where a Bill
against four,
because
brought
against several
Persons
for Things
of distinct
Natures
adjudged
naught upon
a Demurrer.

A Bill is brought against *B. C. D. and E.* the Plaintiff sets forth that he is Keeper of *G. Castle*, and prays *B.* may discover what Title he hath to a certain Meadow which belongs to the said Office, and that the Defendants, as Brewers of the City of *G.* by Custom, ought to pay the said Keeper a certain annual Sum, &c. This Bill was said to be naught, because it contained Things of distinct Natures, and is brought against several Persons, which will occasion several Answers and Examinations, and if suffered to be put all in one Bill, each Party would be obliged to take Copies of what no way concerns his own Cause, whereby his Charge would be increased to no Purpose. Resolved upon Demurrer, *inter Berk and Harris. Hard. 337.*

Original Bill
to execute a
Decree against a
Purchaser.

An Original Bill to execute a Decree of Lands against a Purchaser, who claimed under Parties bound by that Decree, was allowed good upon a Demurrer, *1 Chanc. Cas. 231. inter Organ and Gardiner.*

Filed to put a
Period to a
Decree.

An Original Bill lies to put a Period to a Temporary Decree, and to shew the Purposes of the Decree satisfied.

So where for
Tithes and
Glebe.

So if a Parson prefers a Bill against some for Tithes, and others for Glebe Lands. *Hard. 337. per Cutr.*

Yet may
against several
Parish
oners.

But a Bill for Tithes may be brought against several parishioners because they are of the same Nature, *ibid.* and their Interest is joint.

So if a Lord of a Manor prefers a Bill against several Tenants, for several and distinct Matters, as Common, Waste, several Piscary, &c. this 'tis said is naught, though the Ground and Foundation of this Suit, viz. the Manor, is one entire Thing, *Hard. Rep.* 337. *per Cur.* But not by a Lord against several Tenants for distinct Matters.

No Cross Bill is to be put in after the Publication of Witnesses; and when a Cross Bill is put in, both Causes usually proceed to be heard together, which can't be, if one Bill is filed after Publication in the other Cause. Cross Bills.

The Matter of a Bill will be taken *pro Confessio*, and be decreed accordingly, where a Defendant doth willingly refuse to answer, and stands out all the Processes of Contempt, viz. Attachment, Proclamations, Commission of Rebellion, and Serjeant at Arms. See more of Bills in the several Chapters of *Dismissions*, and *Bills of Revivor*, and *Bills of Review*. Bill taken, *pro Confessio*.

I shall here insert a Precedent Bill brought by a Solicitor, for soliciting a Cause here, and for Expenses, Disbursements, and Fees therein, praying his Bill of Charges may be allowed or taxed by a Master, and also praying an Injunction, for that the Defendant had brought an Action at Common Law for part of the Money received by him.

To the Right Honourable Simon Lord Harcourt, Baron of Stanton Harcourt, Lord Chancellor of Great Britain.

(1.)

Humbly complaining, sheweth unto your Lordship your Orator *R. W.* of the Parish of St. Brides, alias St. Bridget's, London, Gent. That whereas a Cause by *English* Bill had depended in this Court for seven Years and upwards, between *M. D.* Spinster Complainant, and *P. R.* and others Defendants, and the said Cause having been ill managed, and for divers Years delayed by Reason of the Negligence or other Defaults of such Solicitors or Agents as on behalf of the said *M. D.* had solicited and managed the same, so that the said *M.* had little Hopes of bringing her said Cause to any good Issue; she the said *M. D.* knowing the Fidelity and Integrity of your Orator, did thereupon on or about the 15th Day of

(2.)

(3.)

(4.)

of *July*, in the Year of our Lord 1711, and at divers other Times in the same Month of *July*, apply her self to your Orator, and earnestly requested and importuned your Orator to undertake the Management and Solicitation of the said Cause on her behalf, and she the said *M. D.* did then, and at divers other Times in the same Month, promise and declare to your Orator, and to divers other Persons, That if your Orator would undertake and manage, or sollicite the said Cause for her, she the said *M.* would not only pay and satisfy to your Orator all such Sum or Sums of Money as your Orator should lay out, or expend, in and about the Management or Solicitation of the said Cause, but would also fully pay and satisfy to him all the Fees, Profits, and Perquisites usually taken for managing and soliciting Causes in this Court; and would likewise give him a considerable Gratuity or Reward, if your Orator did effectually manage and sollicite her said Cause.

And your Orator further sheweth, That being prevailed upon by the said Entreaties and Importunities, and trusting to, and confiding in such Promises and Declarations of the said *M. D.* your Orator did some time in the said Month of *July*, in the Year aforesaid, undertake to manage and solicit the said Cause for her, and your Orator did accordingly manage and solicit the same for the Space of two Years then next following, or thereabouts, during which Time your Orator on Behalf of the said *M.* apply'd himself to the several Offices and Officers of this Court, paid the several Fees of the same, and took out and examined Copies of the several Proceedings had in the said Cause, made divers Abstracts thereof, drew up Breviats and Instructions for Counsel thereupon, and retain'd and instructed Counsel therein, and also took several Journeys into the Contry, got proper Witnesses examined, attended the several Motions and Hearings in the said Cause, and got Entries made, and took out Copies of the several Rules and Orders of Court, and paid all the Fees of the Court, and Counsel, and by his Care, Pains, Diligence, Expences, Skill, and Fidelity therein, effectually solicited and managed the said Cause. And your Orator farther

ther sheweth, That by such his Care, Pains, Diligence Expences, Skill, and Fidelity as aforesaid, your Orator did about two Years afterwards, *viz.* in the Month of *June* now last past, bring the said Cause to a good Issue, and determin'd the same much to the Benefit and Advantage of the said *M. D.* and with her then good Liking and Consent, brought the said *P. R.* to the following Terms or Articles of Agreement with her, *viz.* That he the said *P. R.* should then pay to the said *M. D.* the Sum of 120 *l.* in Hand, and the further Sum of 200 *l.* within three Months after the said Agreement, and that the said *P. R.* should also deliver up to the said *M.* all the Mortgage Deeds, or Writings, which at any Time had been or should be in his Custody, relating to, or concerning an Estate near *D. in Com. K.* whereupon was then due to the said *M.* as Executrix of the Mortgagee, the Sum of 2000 *l.* as also on Bonds, &c. (as the Agreement is) all which said Terms, or Articles of Agreement, were punctually performed by the said *P. R.* and the several Payments made, and all the Deeds, Writings, Bonds, &c. delivered up to the said *M. D.* on or before the sixth of *July* last, the said *P. R.* being induced and brought to the Performance of the same, by the Care, Pains, &c. of your Orator as aforesaid. And your Orator also sheweth, That after the Cause had been so agreed and determin'd, and after all the Matters and Things so done and transacted by your Orator as aforesaid, the said *M. D.* was so far satisfied with your Orator's Care, Pains, &c. taken in and about the same, that she voluntarily promised fully to gratify and reward your Orator for the same to his Content and Satisfaction, and did declare and promise to your Orator, that she would give or pay to your Orator the Sum of 50 *l.* for the Pains and Trouble your Orator had been at in soliciting the said Cause, besides all the other ordinary and usual Fees and Perquisites of a Solicitor in this Court, she the said *M.* at the same Time, and at divers other Times owning and declaring to divers Persons, That if it had not been for your Orator, and his Care, Pains, &c. in her Affairs, she should never have recovered any Thing from the said *P. R.* and often express'd her
self

self to the like Effect; and the said *M.* was so far satisfied of the good Offices done her by your Orator in the Matters aforesaid, That ~~on~~, or about the fifteenth Day of the said Month of *July* last, she paid to your Orator the Sum of 25 *l.* in Part of the said Sum of 50 *l.* so promised by the said *M.* to your Orator as aforesaid, and likewise the Sum of 10 *l.* 10 *s.* or thereabouts, in part of what was due to him for what he had laid out in Fees and Disbursements to Counsel, Clerks, and Officers of this Court, in and about the said Cause, and at the same Time, did promise and declare to your Orator, and divers others, That she would within two Months after the said Payment, pay and satisfy to your Orator the Sum of 30 *l.* more, which she then acknowledged to remain due to him for his Care, Pains, &c. in and about the Cause aforesaid. And your Orator well hoped that the said *M.* would have performed her Promises and Declarations, and paid to your Orator the said Sum of 25 *l.* part of the said Sum of 50 *l.* within the Time aforesaid.

(5.)

But now so it is, may it please your Lordship, That the said *M. D.* intending to defraud, deceive, and injure your Orator, doth now altogether refuse to perform her said Promises and Declarations,, or to pay or satisfy to your Orator the said 25 *l.* or any Part thereof, or &c. And the said *M.* combining and confederating with *A. B. D. T.* and with divers other Persons unknown to your Orator, whose Names, when discovered, your Orator prays may be inserted in this Bill of Complaint, with apt Words to charge them the said Confederates, sometimes pretending, That your Orator never managed or solicited such Cause for the said *M. D.* as aforesaid; and at other Times, the said Confederates pretend, and give out in Speeches, that your Orator has been already paid and satisfied whatever was due to him from the said *M. D.* the contrary whereof, the said *M.* and the rest of the Confederates, do well know to be true. And the said *M.* doth not only refuse to pay your Orator what remains due to him, as aforesaid, but also the said *M.* unjustly designing to vex, injure, and oppress your Orator, did by the Advice of the said Confederates, or some or one of them, on or about the thirtieth

Note, this is the Cause for which the Injunction is prayed *infra.*

thirtieth of *July* last demand a Bill of Costs of your Orator, and upon your Orator's delivering such Bill to her, she the said *M.* by a Motion made in this Court, got the said Bill referred to Mr. *T.* one of the Masters of this Court to be taxed, as by an Order of this Court, dated on or about the sixth Day of *August* last, may appear, to which Order of Court your Orator willingly submitted, and then was, and still is, ready and willing that his said Bill should be taxed accordingly, and is also ready and willing to allow to the said *M.* on taxing his said Bill, the several Sums of 50 *l.* and 10 *l.* 10 *s.* as received by your Orator in Part thereof. And the said *M.* having served your Orator with a Summons to attend the said Master, in order to tax your Orator's said Bill, and your Orator attending accordingly, was willing to proceed therein; but the said *M.* thereupon refused to proceed in taxing the same, contrary to the said Order of this Court made upon her own Motion. And by the like Advice and Confederacy, as aforesaid, the said *M.* did, in *Michaelmas* Term last, bring an Action of *Indebitatus assumpsit*, for 40 *l.* against your Orator, in her Majesty's Court of Common-Pleas, and hath since taken out a Writ of *Capias acetiam*, and arrested your Orator, and held him to special Bail thereupon, which Writ is returnable on the Octaves of *St. Hillary* then next, and the said *M.* still prosecuting the same Action against your Orator, for Recovery of what she has paid to your Orator in Part of what is due to your Orator, for his Trouble, Pains, and Expences, as aforesaid, tho' the Matter or Cause for which the said Action is brought, is still depending before your Lordship in this Court, and tho' the said *M.* doth well know that much more is due to your Orator from the said *M.* on a just Taxation of his said Bill, than what your Orator has already received, the said Bill amounting in the whole to above the Sum of 90 *l.* of which your Orator has only received the Sum of 35 *l.* 10 *s.* including the Sum for which the said *M.* hath brought her Action against your Orator, as aforesaid. All which Actings and Doings of the said *M.* and the rest of the Confederates, are contrary to Equity and a good Conscience, and tend to the manifest

- (6.) *Intender Consideration* whereof, and forasmuch as your Orator is remediless in the Premises by the strict Rules of Common Law, and is properly and only relievable therein before your Lordship in a Course of Equity, for that your Orator's Witnesses, which could prove the Premises, are either dead, or gone into Places remote and beyond the Seas. *And to the End that the said M. D. and the rest of the Confederates may on their Oaths in this Court, full, true, direct and perfect Answer make to all and singular the Matters and Things herein before charged or contained, as if the same were again particularly repeated and interrogated, and that the said M. D. may upon Oath discover, whether she did not on or about the 15th of July, in the Year 1711, or at what other Time, apply her self to your Orator, and requested and importuned him to undertake the Solicitation of her said Cause, and what were the Motives of such her Application, and whether she did not at the same Time promise, and to whom, That if your Orator would undertake, &c. (and so recite the Substance of the Charge by way of Interrogatory) But Note, Where there are divers Defendants, and some Facts are charged on a particular Defendant, the interrogatorial Part of the Bill ought to be accordingly)* and that the said
- (7.) *M. D. may come to an Account with your Orator, before the said Master of this Court, and may pay to your Orator what shall appear to be justly due to him, and that in Order thereto, the said Master may proceed in taxing and settling your Orator's said Bill of Costs, and that your Orator allowing thereupon what he has already received, the said M. D. may be ordered by this honourable Court, to pay to your Orator what remains unpaid of his said Bill, and that your Orator may be relieved in all and singular the Premises, according to Equity and good Conscience, may it please your Lordship to grant to your Orator his Majesty's Writ (or Writs, if more than three Defendants) of Subpoena directed to the said M. D. A. B. and C. D. thereby commanding them, and every of them, at a certain Day, and under a certain Pain therein to be inserted, to be and appear before your Lordship*
- (8.)
- (9.)

ship in her Majesty's High Court of Chancery, then and there to answer the Premises, and to stand to and abide such further Order and Decree therein, as to your Lordship shall seem meet, and agreeable to Equity and good Conscience.

And for that the Matter and Cause of the Action wherein your said Orator is now prosecuted by the said *M.* in the Common Pleas, was wholly transacted in this Court, and is now under a Reference to a Master of this Court, therefore may it also please your Lordship to grant to your Orator her Majesty's most gracious Writ of Injunction, to be directed to the said *M. D.* and to all and every her Counsellors, Attorneys, Solicitors, Factors, and Agents, commanding them and every of them, under a certain Pain therein to be express'd, That no further Proceedings be had in the said Action of *Indebitatus assumpsit*, brought by the said *M. D.* against your Orator in the said Court of Common Pleas, until your Lordship shall have given further Order and Directions therein,
And your Orator shall ever pray, &c.

See the Answer to
this Bill *Post.* in
the Chapter of
Answers, &c.

Under which the Counsel subscribes his Name, and usually the Day of the Month, and Year wherein he does it.

Now in all Bills of Equity, there may be nine several Parts observed, according as they are noted in the foregoing Precedent, viz.

I. **T**HE Direction of the Bill, containing the Title of the Judge, and Stile of the Court, which in Chancery, is always to the Lord Chancellor, Lord Keeper, or Lord Commissioners of the Great Seal, except where the Chancellor or Keeper is himself a Party, and then the Direction is, To the King's most excellent Majesty, in his Majesty's High Court of Chancery.

Note, English Bills in the Exchequer are directed thus, To the Right Honourable *R.* Earl of *O.* and *M.* Lord High Treasurer of Great Britain, Sir *W. Wyndham* Knight, Chancellor and under Treasurer of her Majesty's Court of Exchequer at Westminster. Sir
Edward

Exchequer.

Edward Ward, Knight, Lord Chief Baron of the same Court, and the rest of the Barons there.

Exchequer.

2. The Introduction beginning, *Humbly complaining, &c.* and containing only the Plaintiff's Name and Place of Abode, and Title or Addition, as *Gen. &c.* But if the Bill be in the *Exchequer*, then after *Gen. add, and Debtor and Accomptant to our Sovereign Lady the Queen, as by the Records of this Court and otherwise it doth and may appear.*

3. The Premises, and this commonly by Way of Recital, sets forth some former Transactions and Occurrences antecedent to the Occasion of the Bill, and introductory thereto, and begins with the Word, *Whereas, &c.* Whereas a Cause by English Bill had depended in this Court for seven Years, or was commenced at such a Time; or a Deed was executed at such a Time, by such Persons, to such Purposes, &c.

4. The Allegations or Suggestions of the Bill alledging, That the Complainant had done such or such Things at the Defendant's Request, or for his Benefit, or that the Defendant had done such or such Things which he ought not, to the Complainant's Prejudice; and this Part of the Bill being the Ground or Foundation of the Cause or Complaint that follows, often consists of many and divers Particulars, as above from N^o. 4. to N^o. 5.

5. The Clause containing the Complaint of Confe-
deracy, Fraud, Injury, Oppression, or the like, and this is of Course, and begins thus, *But now so it is, may it please your Lordship, &c.*

6. The Clause that gives Conuzance in Equity, wherein some Matter must be alledg'd, That the complainant can't have Relief at Common Law, and begins thus, *In Consideration therefore of the Premises, and forasmuch as, &c.*

7. The interrogatorial Part of the Bill beginning thus, *And to the End that the said Defendants may true, full and perfect Answer make, &c.* and this usually recites by Way of Interrogatory the Substance of the Allegations and Suggestions as are contained in the Parts, N^o. 3 and 4.

8. The Prayer of the Bill which in the Precedent above is to come to an Account, and to pay Money due, &c.

&c. or it may be to cancel, deliver up, or produce Writings, or to compel the Execution of Writings; to make a good Title to Lands; to deliver Possession of Lands; to perform a Contract; or in general, any other Matter for which Relief in Equity is prayed.

The Conclusion, which generally consists of those Words of Course that usually prays Process of Subpoena only, viz. *May it please your Lordship to grant to your Orator his Majesty's Writ or Writs of Subpoena, &c.*

(9.)

But *Note*, in the Precedent above, there is likewise a Prayer for a Writ of Injunction to stop Proceedings at Law, and the like may be added *mutatis mutandis*, for an Injunction to stay Waste, or for a Writ *Ne exeat regnum*, *Dies clausit extremum*, *De Homine Replegiando*, or *Habeas Corpus cum Causa*, &c. if the Occasion of the Bill require it.

The foregoing Directions may be of Use in drawing most Bills in Equity, and if observed, it will be needless to insert in this Treatise many Precedents of Bills at large; only I shall add some few that are most singular in themselves: And first (the former being brought by a Solicitor) I shall here insert one brought by Husband and Wife against a Solicitor, who confederating with the Guardian of the Wife, had vexed the Plaintiffs with unjust Charges and Demands; and to have a Bond and Judgment assigned to the Plaintiffs.

Note here, N^o. 1 and 2 may be as before.

WHereas *W. B.* your Oratrix's late Father, deceased, of the Parish of *N.* in the County of *S. Gent.* was in his Life-time, viz. in or about the Year of our Lord 1699, seized in his Demesne as of Fee, or of some other good Estate of Inheritance, of and in the Capital Messuage of *M.* in the said Parish of *N.* and of divers other Messuages, Lands and Tenements in the several Parishes of *N. &c.* of the yearly Value of 160 l. beyond Reprises, and being so seized about the Time aforesaid, intermarried with ---- &c. since also deceased, by whom the said *W.* had Issue only two Daughters, viz. *M.* your said Oratrix, and *K.* the now Wife of *P. R.* of *C.* in the said County

3.

of S. Gent. And the said W. afterward, viz. in or about, &c. died, being so seised of the aforesaid Premises; and thereupon the said Premises descended and came to your said Oratrix and the said K. as Daughters and Coheirs of the said W. (or as a Title may be otherwise derived to 'em, as by Will, &c.) and your said Oratrix and her said Sister being then Infants of very tender Years, the said M. their said Mother, in their Right, entered into, and possessed her self of the Premises, and for several Years received the Rents, Issues and Profits thereof; and during such Possession, intermarried with one A. B. of, &c. who in Right of your said Oratrix, and the said K. and as their Guardian, into the said Premises entered, and for several Years received all and singular the Rents, Issues, and Profits thereof, and converted the same to his own Use, refusing to give to your said Oratrix, or to the said K. any Accompt thereof, or to make them any reasonable Allowance for their Support and Maintenance.

(4.)

Whereupon for their Redress therein, they made Application to T. D. of, &c. who being their Uncle, viz. their Mother's Brother, did (as he pretended) commiserate the distressed Condition of your Oratrix and the said K. and being by their said late Father's Will (or by Direction of the Court on their own Election) appointed to be their Guardian, did, as their Guardian, and in the Names and Right of your Oratrix, and the said K. exhibit a Bill in this Court against the said A. B. and the said M. his then Wife, to compel them to give an Accompt of the Profits of the Premises, and to make Provision for the Support, Maintenance, and Education of your said Oratrix and her said Sister; and for the better and more effectual Prosecution of the said Suit, the said T. D. did employ one R. B. of, &c. Gent. to solicit and manage the said Cause, who then and ever since hath acted as a Solicitor in this Court, to manage and solicit the said Cause; and within some short Time afterwards the said T. D. pretending that much more Money had been expended, and much more would be disburs'd in order to the carrying on the said Suit, He

He the said *T. D.* pretending it was only for his Security therein for such Money as he should expend in and about the said Suit, procured your Oratrix and her said Sister some Time before they became of full Age, tho' dated after, to give a Bond or Obligation of the Penalty of 200*l.* conditioned for Payment of 100*l.* at some certain Day then to come, but since past; and also to seal and execute a Warrant of Attorney to confess a Judgment thereupon in his Majesty's Court of *King's Bench* at *Westminster*, for the said Sum of 200*l.* He then declaring, that both the said Securities were given for no other End, than that thereby he might be enabled to recover what Money he should expend in Prosecution of the said Suit, and that the same should be void as against your Oratrix, in case she, or any for her, should pay or cause to be paid, one Moiety of the Charges incident to the said Suit: And *shew*, that after the said *T. D.* had obtained such Securities as aforesaid, your said Oratrix and her said Sister did (on or about *such a Time*) pay or cause to be paid to the said *T. D.* the Sum of 50*l.* and at several other Times did pay or cause to be paid to him divers other Sums of Money, amounting to 50*l.* more; so that your said Oratrix and her said Sister paid or caused to be paid to the said *T. D.* their Guardian, the Sum of 100*l.* or more, for his Expenses, &c. in and about the said Suit; which said several Sums were paid during the Minority of your Oratrix and her said Sister, and before the Intermarriage of your Orator and Oratrix, and he received the same in and towards the Discharge of what Monies the said *T. D.* or *R. B.* or either of them, could justly demand of and from your said Orator and Oratrix, and the said *K.* or either of them; or however your said Orator and Oratrix by the aforesaid Payments, have paid and satisfied their full Share and Proportion of the Charges of the said Prosecution, and they ought to be acquitted and discharged thereof, and be protected and saved harmless against the said Bond and Judgment. And accordingly the said *T. D.* did at the Time of your Orator's last Payment, declare and promise that he would release your said Orator and Oratrix, and deliver up to them all the Deeds,

Of Bills in Equity, &c.

Evidences, Writings, and Copies of all the Proceedings relating to the Premises and Matters aforesaid.

(5.)

But now, &c. (*setting forth a Confederacy between T. D. and R. B.*) the said R. B. pretending that the said T. D. had not paid him his full and just Demand, hath lately petitioned the honourable the Master of the Rolls, to have it referred to one of the Masters of this honourable Court, to take and state the Account between him and the said T. D. And having obtained an Order thereupon, hath, in pursuance thereof, brought before Mr. M. one of the Masters of this Court, a Bill of his particular Demands, both for Fees and Disbursements, which amounts to ----- And the better to carry on a Design to wrong your Orator and Oratrix, the said T. and R. by Collusion between themselves, do manage the Matters so referred to the said Master, with a Design, and in order to load your Orator with a great Sum of Money, when in Truth there is nothing due to the said R. or the said T. And the said T. doth threaten to take out Execution upon the said Judgment against your Orator, for Recovery of the said R.'s Demands, pretending (though untruly) that the same are over and besides such Fees and Disbursements which your said Orator and Oratrix, or the said R. or any other on their or either of their Behalf had discharged in Manner as aforesaid. Whereas they well know that all Demands whatsoever that they, or either of them can make from your said Orator or Oratrix, are fully satisfied and paid to the said T. D. who therewith promised, and stands obliged to pay off and satisfy the said R. B.'s Demands; but the said T. D. refuseth so to do, designing, by Virtue of the aforesaid Bond and Judgment, to make your Orator liable to pay what the said R. B. shall recover, and permits the said R. to proceed for Recovery of his said Demands, without any Manner of Opposition, in order to make your Orator and Oratrix responsible for the same. And for that the said T. D. and R. B. do well know (and so the Truth is) That in the said Charge, or Bill of Particulars brought before the said Master, the said R. hath made several Demands for Fees and Disbursements, when there was no Business in Agitation,

2

nor any Money disbursed, and in other Places hath very much over-charged the said T. D. for Fees pretended to be paid for Counsel, for that the said Cause being many Years depending in this honourable Court, the said R. B. and T. D. having appeared very vexatious, and put your Oratrix and her said Sister to great Delay and Charge, which tended almost to their utter Ruin, they were by the said R. B. admitted to sue in *Forma Pauperis*; and thereupon the Counsel which the said R. pretended, and his said Bill hath charged to have received several considerable Fees, did so far commiserate the distressed and miserable Condition of your Oratrix and the said K. (who for great Part of the Time whilst the said Cause depended, had not wherewith to subsist, or to carry on the said Cause, but the Charity and Benevolence of their Friends, from whom they received the Monies paid to the said T. D.) that the said Counsel neither did, nor would receive such large Fees as the said R. B. hath charged the said T. D. with. For which Kindness and Charity of the said Counsel, your Orator hath since his Intermarriage made his grateful Acknowledgments to them. And the said R. B. hath also charged in his said Bill, divers Sums and Fees incident to the bringing on of Exceptions put in by the said T. D. to a Report made in the said Cause by Sir R. H. Knt. late one of the Masters of this Court, when by Agreement between him and the said T. D. the arguing of the said Exceptions was put off from Time to Time for divers Terms, and were never argued till *Easter-Term* last, which was done at your Orator's Charge; so that there was not, or ought not to have been any Thing paid in Respect thereof, yet nevertheless the said R. B. hath brought to Accompt, and charged in Respect thereof, no less than 40 *l.* or some such large Sum; and in many other Particulars, the said R. B. hath made very extravagant and unreasonable Demands, which the said T. D. is very sensible of, but doth connive thereat, he and the said R. B. purposing to share and divide between themselves all such Monies as they by their aforesaid Proceedings shall get allowed by this honourable Court for the said R. B's Fees and Disbursements.

And the said *T. D.* doth refuse to demand of the said *P. R.* and *K.* his Wife, any Sum of Money for or towards the Discharge of his pretended Demands, although he well knows that your Orator hath paid more than his Share and Proportion of the said Charges, and in Truth, more than in Justice or Reason they do in all amount to; and is ready to pay the Remainder (if any there be) which shall appear upon a fair and just Accompt, provided he may have an Assignment of the said Bond and Judgment, to the End he may have the Liberty of putting the same in Suit against the said *P. R.* and *K.* his Wife, in order to reimburse himself their Share and Proportion of those Charges which they ought to pay. But the said Confederates refuse to come to any Accompt with your Orator for the same, although he has often requested them, and is still ready and desirous so to do; but they would put the whole Burthen and Charge of the Suit upon your Orator only. All which Actings and Doings of the said *T. D.* and *R. B.* and the rest of the Confederates, are contrary to Equity and good Conscience, &c.

(6.) In tender Consideration, &c. and forasmuch as your Orator and Oratrix are remediless, &c. the same being Matters of Discovery being known only to the said Confederates, and for that the Witnesses which should prove the Truth of the Premisses, are either dead, or gone beyond the Seas, or in other Places remote and unknown to your Orators; or for that they are so very aged and infirm, that no Benefit can be had of their Testimony at any Trial at Law. (*Here any other Reasons may be assigned as proper to give Continuance of the Cause in Equity.*)

(7.) To the end therefore that the said Confederates may as fully answer all and singular the Matters and Things herein before charged, as if the same were here again repeated, and particularly interrogated, and more especially that the said *R. B.* (the Solicitor) may set forth upon Oath what Sum or Sums of Money he hath received at any Time, and when, and from whom, for, in, or towards the Discharge of the Monies due to him from your said Orator or Oratrix for Fees and Disbursements, and may give a true and

and just Accompt of all his Demands, and whether he hath not received more than, or as much as is justly due to him; and whether he hath not in any, or what Particular or Particulars mentioned in his said Bill produced before the said Master, over-reckoned or over-charged any or what Sum or Sums of Money more than his just Due, and whether he hath actually paid all and every the Fees, Sum and Sums of Money in the said Bill charged to be paid by him, or how otherwise the same became due; and that *T. D.* may upon his corporal Oath, discover what Sum or Sums of Money he, or any for him, and who by Name have, or hath at any Time, and when, and of whom received, which was paid or satisfied, or ought to have been applied for or towards the Satisfaction or Discharge of the said *R. B.*'s Demands, or how the same, or any, and what Part thereof hath been applied, and when, and for or upon what Account or Consideration the said Bond and Judgment, or either, and which of them were or was had or obtained.

And to the End that he and the said *R. P.* and *K.* his Wife, may shew Cause, if any they can, why the said Bond and Judgment should not be assigned to your Orator, if he already hath, or hereafter shall pay off and discharge the said *T. D.*'s Demands, and in the mean Time that all Proceedings both at Law, and in this Court, for Recovery of the Monies secured by the said Bond and Judgment, or either of them, or for the said *R. B.*'s Fees and Disbursements, may be staid, and your Orator and Oratrix be relieved in the Premises according to Equity and good Conscience.

May it please your Lordship, &c. (*And so pray Process of Subpœna against T. D. R. B. and R. P. and K. his Wife.*)

A Bill to be relieved against a Bond taken of the Plaintiff by Duress (abbreviated)

WHereas *F. C.* Widow, who departed this Life about, &c. did by her last Will and Testament, constitute and appoint your Orator, and one *E. C.* Guardian of her Children *D. C.* and *A. C.* during their Minority, the said *E. C.* did astewards, viz. about,

(8.)

(3.)

&c. take upon himself the Disposal of the personal Estate of the said F. whereof she died possess'd

(4)

Whereupon your Orator about, &c. did buy some of her Goods, to the Value of 8*l.* and no more, and shortly after the Death of the said F. one W. A. designing to get the said Personal Estate belonging to the said Children into his Hands, did pretend that the Right of Administration of the said personal Estate did belong to him, and thereupon a Suit did arise in the Ecclesiastical Court, in which, for and on behalf of the said Children, your Orator did expend 14*l.* or thereabouts, in Defence of the said Children and their Estate, &c.

(5)

Now so it is, &c. That the said D. C. and A. C. Children of the said F. combining and confederating with one C. B. a Sheriff's Bailiff of the Hundred of E. in the County of S. and contriving how to wrest and extort a Sum of Money from your Orator, he the said C. B. did cause your Orator to be arrested at the Suit of them the said D. and A. or one of them, upon a Writ or Action for a great Sum of Money, although your Orator was no way indebted to them, or either of them, they well knowing your Orator could not procure Bail to such Action; and when your Orator was in Custody, they would not accept of a Warrant of Attorney for an Appearance, but threatened that they would keep your Orator in Gaol, unless he would give a Bond of 40*l.* or some other great Penalty, with Condition for Payment of such Sum as they, or some of them pleased to insert therein, which your Orator remembers not; and they, or some of them, prepared such Bond, and threatened that your Orator should never get out of Prison, if he did not sign, seal, and deliver the same to the said Confederates, or some of them; and thereupon your Orator was forced and compelled, for the gaining of his Liberty, to sign, &c. and did by Duress sign, &c. to them, or some of them, such Bond. But the said C. B. did, on your Orator's delivering of the same, promise and agree with your Orator, that your Orator should be satisfied and allowed what he had paid and expended in the said Suit, as aforesaid. Notwithstanding which Promise and Agreement, they the
said

said Confederates do pretend and threaten that they will sue your Orator on the said Bond, and recover the Penalty thereof against your Orator, although the said Confederates do well know, that the said Bond was obtained by the Means and Practices aforesaid, and without any real or valuable Consideration. And that your Orator is not indebted in any Thing to them or any of them, but that there is a considerable Sum of Money coming and owing to your Orator upon Account of his said Disbursements; and the said Confederates do design to vex, trouble and oppress your Orator by, and under Colour of the said Bond, and do refuse to allow or make to your Orator any Satisfaction for or in respect of his said Disbursements. All which Actings and Doings of the said Confederates are very unjust and tend, &c.

In tender Consideration whereof, and for that your Orator is remediless in the Premises by the strict Rules of the Common Law, and can have no Relief therein, but in a Course of Equity before your Lordship in this Honourable Court, and for that your Orator's Witness, &c. *ut ante*.

(6.)

To the End therefore that the said Confederates and every of them may, upon their corporal Oaths, full, true and perfect Answer make, &c. And that they and each of them may particularly set forth for what Cause your Orator was arrested, and for and upon what Consideration the said Bond was given, and to whom, and what is the Date, Penalty and Condition thereof, (*or else pray to set it forth in hæc Verba*) And whether the said C. B. did not promise your Orator, that before the said Bond was sued your Orator should be paid and satisfied his Expences and Disbursements, or to that Effect.

(7.)

And that all Proceedings at Law may be staid upon the said Bond, and the same may be ordered by Decree of this Court to be delivered up to your Orator to be cancelled, and your Orator be relieved in all and singular the Premises according to Justice and Equity.

(8.)

May it please, &c. *Process against C. B. D. C. and A. C.*

A Bill

A Bill to be relieved against a Judgment entred against one who was Security for a Prisoner on Pretence of an Escape.

(4.) **T**HAT your Orator on or about, &c. together with one G. E. and one F. D. became bound in one Bond of 500 l. or thereabouts, unto W. L. with Condition, That the said G. E. should be and continue a true Prisoner unto the said W. L. during the Time of his Imprisonment, until he should be therefrom lawfully discharged. The Condition of which Bond is as followeth, or in Words to the like Effect, (*viz. reciting the Condition.*) And that at the same Time your Orator did, together with the said G. E. and F. D. also sign, seal and deliver one other Bill or Writing wherein he was bound to the said W. L. with Condition, That the said G. E. should pay to the said W. L. 3 s. 6 d. per Week for Chamber-Rent every Week during his Imprisonment. And your Orator, together with the said G. E. and F. D. did also at the same Time seal and deliver one other Writing in Nature of a Warrant of Attorney to confess a Judgment on the said Bond of 500 l. with a certain Clause or Clauses therein mentioned, That if the said G. E. should make an Escape out of the Custody of the said W. L. his Deputy or Servant, and that the said W. L. was thereby dampnified, that then it might be lawful for him the said W. L. by his Attorney to enter up Judgment against your Orator, and the said G. E. and F. D. severally.

(5.) Now so it is, &c. That one A. F. under Pretence of an Escape of the said G. E. as your Orator is informed, hath brought a Bill or Declaration against the said W. L. for 156 l. for Debt and Costs of Suit, to which Bill is pleaded a resh Pursuit and Retaking, and no further Proceedings thereupon had; and since that Time the said A. F. by Connivance, Subtilty and Fraud hath procured the said W. L. to assign to him or to his Use the said Bond and Judgment, contrary to Equity and good Conscience, to the utter Ruin of your Orator, unless relieved by this Court. And *sheweth*, That in all such Cases where the said W. L. is sued

sued as Marshal of the Prison of the *Queen's-Bench*, for the Escape of any Prisoner, it is and hath been the Custom of the said *W. L.* to permit such Prisoner or his Security to defend the same, and no Security to be assigned before Verdict and Judgment obtained against him the said *W. L.* as Marshal of the said Prison; and your Orator did desire and request the said *W. L.* that he might have Liberty to defend himself in that Suit brought against him by the said *A. F.* and did offer, that if the said *W. L.* were cast therein, that then your Orator would pay and discharge all such Money, &c. as the Court should adjudge against him. And your Orator doth aver, That all Charges and Costs of Suit hath been paid by the said *G. E.* the Prisoner, by your Orator's Order, and that the said *A. F.* hath given the said *W. L.* a Discharge for the same. All which your Orator hopes to prove to this honourable Court; notwithstanding which the said *W. L.* doth threaten to sue your Orator upon the said Judgment, &c. contrary to all Equity.

In tender Consideration, &c. and for that your Orator can have no Relief but before your Lordship in this Honourable Court against the said Judgment most wrongfully and unjustly entred up, as aforesaid, for that your Orator's Witnesses which could prove the Premises, are either dead or gone, &c.

(6)

And to the End the said *W. L.* and *A. F.* and either of them may upon their several corporal Oaths Answer make to all the Matters and Things in this Bill charged, and may particularly set forth when such Escape was made, as is pretended, and how long since a Declaration was brought against *W. L.* and whether *G. E.* was not in Prison long before, and at that Time; and whether he be not now in Prison under the said *W. L.*'s Custody at the Suit of *A. F.* and whether a fresh Pursuit was not pleaded to the said Declaration by *W. L.*'s own Order; and whether it is and hath been a Custom for *W. L.* to allow the Prisoner or his Security to defend any Suit brought against him for an Escape; and whether your Orator did not desire to have that Liberty, and what the said *W. L.* is or was dampnified before he assigned over your Orator's Security; and whether he and his

(7.)

Attor-

Of Bills in Equity, &c.

Attorney were not paid all Fees, Charges, &c. for defending the said Suit by G. E. the Prisoner, and what Consideration W. L. or any to his Use had, or is to have for assigning over your Orator's Bond and Judgment.

(8.) And to the End that the Truth may more plainly appear, it is *humbly prayed*, That all the Writings in the Bill mentioned may be brought into Court, and the said Bond and Judgment vacated, and that your Orator may be relieved in all and singular the Premises according to Equity, &c.

(9) *May it please your Lordship, &c. Process prayed against W. L. and A. F.*

A Bill to have the Consent of the Patron, Parson, and Ordinary for enlarging a Parish Church, and to apply Money given to poor People to that purpose.

(2) **S**HEW, &c. your Orators A. B. and C. D. Churchwardens of the Parish-Church of C. in Com^s S. and also E. F. G. H. J. K. &c. principal Parishioners and Vestry-Men of the said Parish of C. for and on behalf of themselves, and others the Parishioners and Inhabitants of the same Parish.

(3.) Whereas the Numbers of the Parishioners and Inhabitants within the said Parish have of late Years been very much increas'd, and are continually increasing by Reason of the great Concourse of Persons from London and other Places, resorting to, and residing in the said Parish; so that the Church belonging to the said Parish, is, at present, by reason of its Smallness and irregular Structure, no Way capable of receiving or containing such Parishioners and Inhabitants as on Sundays and other Holy Days resort and repair to the said Church, whereby many of them are depriv'd of the Benefits of joining in the publick Prayers, and hearing the Word of God preach'd within the said Church; And whereas divers publick Vestries, and other general Meetings and Assemblies of the said Parishioners and Inhabitants have been call'd and held, wherein divers Methods and Expedients have been propounded and considered of in order to remedy and rectify the said Inconveniences,

niences, at which publick Vestries, &c. it has been generally and unanimously agreed on and resolv'd, That the only proper and effectual Method or Expedient to remedy the same will be by altering and enlarging some Part of the present Structure of the said Church, that is to say, by pulling down such Part thereof, and by erecting a new additional Building to the said Church, extending in Length from that Part thereof call'd F's Isle to the West End of the said Church, and of equal Breadth with the said Isle, and that a Vault should be made under such new additional Building of equal Dimensions and Extent with the said Building; and whereas such Enlarging and Augmentation of the said Church, would not only be an Ornament thereto, and conduce to the Advancement of Religious Worship, &c. as aforesaid, but also it would be a good Expedient for making a better Provision for the Maintenance and Support of the Poor of the said Parish, by applying the Fees and Profits of Burials in the said Vault, and of the Seats in such additional Buildings, towards their Maintenance; therefore it was at such publick Vestries also agreed and resolved, That such Fees and Profits should be accordingly applied for, and towards, &c. And whereas at such Vestries, &c. it appeared that the Charge of erecting such new Building, and finishing and adorning the same with Pews and Seats, &c. and of making such new Vault, &c. would amount to the Sum of ----- and upwards, and there being formerly deposited, and now remaining in the Hands of W. H. of the same Parish, Esq; the Sum of 150*l*. upon his Bond, given to the said Church-wardens of the said Parish, the same being the Publick Money of the said Parish, and given to the Poor of the said Parish by the Will of D. R. late of the same Parish, Widow, deceased, and thereby directed to be put into the Hands of the said W. H. Esq; and he to pay Interest for the same at the Rate of 5*l*. per Cent. only, and it appearing to the said publick Vestries and Assemblies of the said Parishioners, that the Profits and Perquisites that would arise by letting the Pews and Seats in such additional Buildings, and from the Fees for Burials, &c. in such new Vault, would yearly

yearly amount to a much greater Sum than the Interest of the said 150 *l.* so deposited in the Hands of *W. H. Esq;* at 5 *l. per Cent.* as aforesaid, doth amount unto. It was also unanimously agreed and resolved on by the said Vestry, &c. That the said 150 *l.* should be applied towards the erecting such Building, and making such Vault as aforesaid, and that the Parishioners and Inhabitants would advance and make good the Residue of the Charges and Expences thereof, over and above the said 150 *l.* by voluntary Payments and Contributions; and that after the said Building and Vault should be finished, all the Fees, Profits and Perquisites arising, or accruing by letting, selling, or disposing of the Pews and Seats in such additional Buildings, and the Fees and Profits of Burials in the said new Vault, should wholly and only be applied and appropriated to the Relief and Maintenance of the Poor of the said Parish for ever, and thereupon your said Orators, and the rest of the Parishioners and Inhabitants of the said Parish well hoped and believed, from such a hearty and unanimous Concurrence and Agreement as aforesaid, their good and pious Endeavours would have had a suitable Effect. But so it is, &c. That your Orators are inform'd and advis'd, That by the strict Rules of Law, such Application of the said 150 *l.* cannot be made without Decree of this Honourable Court for that Purpose had and obtain'd, and that such additional Building cannot be erected, nor such new Vault made, without the Licence and Consent of the Ordinary, Patron, and Rector, or Parson of the said Church. And for that the Right Reverend, &c. (naming the ordinary, Patron and Incumbent of the said Church) are willing to concur in so good and pious an Undertaking, provided it be done under the Direction and Decree of this Honourable Court, and for that the said *W. H. Esq;* is also willing to pay and advance the said Sum of 150 *l.* now in his Hands to the Church-wardens of the said Parish for the purposes aforesaid, provided he may be Indemnified by Decree of this Court for so doing; and for that *T. W.* and *J. P.* the present Overseers of the Poor of the said Parish of *C.* are likewise willing to concur in

(5.)
Note, here is no Complaint of Injury, but only of want of Power to do good, and therefore and for that the Bill was amicable, the interrogatorial Part is omitted.

so good an Undertaking, and to comply with the Desires of your Orators and the rest of the Parishioners therein, if they were thereunto authorized by the Decree of your Honourable Court.

In tender Consideration, &c, and forasmuch as your Orators and the rest of the Parishioners have no Means to effect such their good and pious Purposes for want of a good and sufficient Power and Authority; nor can have any Redress of the Inconveniences aforesaid, or any Relief in the Premises, but by the Aid and Assistance of this high and honourable Court.

To the End therefore that the Ordinry, Patron and Incumbent aforesaid may be directed by the Decree of this Court to join in granting a Licence or Authority to your Orators and the rest of the Parishioners for the erecting such additional Building to the Parish Church of C. and making such new Vault in the same as aforesaid; and that the said W. H. Esq; may be also thereby decreed to advance and pay into the Hands of the Churchwardens of the said Parish, or such others as your Lordship shall think fit, the said Sum of 150 l. now in his Hands, in order to be employed in and about the said Building and Vault as aforesaid; and that the said T. W. and J. P. Overseers of the Poor of the said Parish, may by such Decree be directed to consent to the paying and advancing of the said 150 l. for the Purposes aforesaid; and that your Orators and the rest of the said Parishioners may be also thereby enabled to undertake and perfect the said additional Building and new Vault; and to that End that they may have Power to apply the said 150 l. in and about the same, and likewise to collect voluntary Payments and Contributions from the said Parishioners and Inhabitants for that Purpose; and that the Profits and Perquisites arising by Burials in the said Vault, and by Letting or Disposing of the Pews and Seats in such additional Building, may be wholly and only employed toward the Relief and Maintenance of the Poor of the said Parish of C. and that your Lordship may make such further Order and Decree for undertaking, advancing and perfecting your Orator's good and pious Designs and Endeavours as to your Lordship shall seem just and equitable.

May

(6)

(7.)

Note, The Prayer is here instead of the Interrogatorial Part.

Of Writs of Subpoena ad Respondend.

(9)

May it please your Lordship, &c. Process prayed against the Ordinary, Patron and Parson, W. H. Esq; the Trustee for the said 150l. and the Overseers of the Poor of the Parish.

The foregoing Precedents I think sufficient to shew the Method of forming or drawing Bills in Equity, and therefore I shall proceed to Subpoena's, and the subsequent Process.

C H A P. IV.

Of Writs of Subpoena ad respondendum, and other Writs and Processes of this Court.

Subpoena ad
Respondend.

Certificate of
the Bill.

HAVING in the former Chapter shewn you the Method of Preparing and Filing of Bills in Equity, we now proceed to shew the Course to be observed in taking out the Writ of Subpoena ad Respondend, and those other Writs and Processes that are consequencial thereunto, viz. Attachments, Proclamations and Commissions of Rebellion, &c.

After you have filed your Bill according to the foregoing Instructions in Page 40, you are to get a Certificate thereof under the Hand of the Six Clerk in the Cause, pursuant to the Stat. 4 & 5 Anna before-mentioned; which Certificate is usually in this Form, viz.

Inter A. B. Quer. & C. D. & al. Defend.

I do hereby Certify, That the Bill in the said Cause is filed in my Office. Dated this 20th of May, 1714.

For which Certificate, no Fee is to be paid.

Subpoena Of-
fice.

With this Certificate you are to apply to the Subpoena-Office near Curstons-Alley in Chancery-Lane, and leave the same there with the Clerk that writes the Subpoena, together with a Note in Paper of the Plain-
tiffs

tiffs and Defendants Names and Return of the Writ, in this Form, viz.

Subpœna ad Sect. A. B. vers. C. D. & al. Ret' immediate. Note for the Writ.

This is when the Defendants live in Town, and you would have it returnable presently; and if it be returnable on a certain Day, then it must be thus, *Ret' Die Luna*, (or *Martis*, &c.) together with the Day of the Month. But if it be on a common Return-Day, which is most usual when the Defendants live above 10 Miles out of Town; then you are to observe the Returns in the following Page, both for the *Note* and the *Writ*; and the same Forms are to be observed in the Returns of all other Writs in this Court, as well as *Subpœna's*.

So that a *Subpœna ad Respondend.* is returnable either, Return of the
Subpœna.
1. *Immediate*, when the Defendant lives in Town, or within 10 Miles thereof, of which Affidavit must be made.

And *Note*, in Term 'tis needless to have it *ret. immediate*, for it may be on any Day certain.

2. On a *certain Day of the Month*, which must be in Term, except Cause be shewn on Petition or Motion, for having it returnable in the Vacation.

3. On a *common Return Day*, according to the Directions in the two following Pages.

And *note*, where there are many Plaintiffs, all of 'em need not be named either in the *Note* or the *Writ*, but only the first with an, & *al.* thus;

Subpœna ad Sect. A. B. & al. versus C. D. &c.

But all the Defendants ought to be named in the *Writ*, (tho' not so in the *Note*) only you can put but three Defendants Names in one Writ (in which Case a Man and his Wife are admitted to be but one) and if there are more Defendants, there must be several *Subpœna's*.

For the Manner of serving this and other Writs of Time of *Ser. Subpœna*, vide pag. 70 to 74. And as to the Time of vice-Service, *Note*,

1. It must be served before Noon of the *Return-Day*.
2. It is good Service, tho' in the Night, if before the *Return-Day*.

F

If

Returns of
Subpoena's and
other Writs.

If the Return is to be made in *Michaelmas-Term*, thus,

For the Note,

Tres Michis.
Mens. Michis.

Res.

Cro. Animarum
Cro. Mart.
OEtab. Mart.
Quind. Mart.

For the Writ,

Dies datus
Defend. ad
respondend.
or, *ad faciend.*

Melior Respons.
or, *ad Rejungend.*
or, *ad Replicand.*

or, *ad producend. Tefses*; or, *pro Publicatione super Commissionem*;
or, *ad ostend. Causam*, aliter *publicatio conceditur*, and the like.

A Die Sti. Mich prox. futur in tres Septim. when Mich. day is to come.
Or, a Die Sti. Michis. in tres Septimanas poox. futur. when it is past.
So, a Die Sti. Michis. prox. futur. in unum Menssem, when to come.
Or, a Die Sti. Michis. in unum Menssem prox. futur. when past.
In Cro. omnium Animarum prox. futur.
In Cro. Sti. Martini prox. futur.
In OEtab. Sti. Martini prox. futur.
In Quinden. Sti. Martini prox. futur.

If the Return is to be in *Hillary-Term*, thus,

OEtab. Hillar.
Quind. Hillar.
Cro. Pur.
OEtab. Pur.

Dies datus, In OEtab. Sti. Hillarii prox. futur.

&c. ut In Quinden. Sti Hillar. prox. futur.

supra. In Cro. Purif. Beate Marie Virginis prox. futur.

In OEtab. Purificationis Beate Marie Virg. prox. futur.

If

If the Return is to be in *Easter-Term*, thus,

For the Note.

Quind. Pasch.
Tres Pasch.

Ret.

Mens. Pasch.
Cro. Asc.

F 2

For the Writ.

Dies dat. In Quinden. Pasch. prox. futur.

&c. ut

supra.

A Die Pasch. prox. futur. in tres Septimanas, when Telled before Easter-day.

Or, à Die Pasch. in tres Septimanas prox. futur, when Telled after Easter-day.

So, à Die Pasch. prox. futur. in unum Mens. or, in unum Mens. prox. futur.

In Cro. Ascens. Dom. prox. futur.

And in *Trinity-Term*, thus.

Cro. Trin.

Ost. Trin.

Ret. Quind. Trin.

Tres Trin.

Dies dat.

&c. ut

supra.

In Cro. Sancta Trin. prox. futur.

In Ost. Sancta Trin. prox. futur.

In Quinden. Sta. Trin. prox. futur.

A Die Sta. Trin. prox. futur. in tres Septimanas. if Telled before Trinity-Sunday.

Or, à Die Sta. Trin. in tres Septimanas prox. futur. if after Trinity-Sunday.

But

Fees for the
Writ.

But besides the Certificate and Note afore said, you leave with the Clerk of the Subpœna's 2 s. for his Fee, if two Defendants, and 3 s. if three Defendants; who thereupon gets it sealed; and when you call for it, you pay him 1 s. 6 d. more, viz. 6 d. for the Seal, if sealed at a general Seal, and 1 s. the King's Duty. But it sometimes happens in the Vacation, That in Causes of great Moment, and where speedy Process is required, a private Seal will be necessary, for which you pay two Guineas for opening the Seal, besides the Fees for the Writ.

Subpœna the
original Pro-
cess.

The Writ call'd a *Subpœna ad Respondend'*, is the original or leading Process of this Court when the Suit is commenced by *English Bill*, and requires the Defendant's Appearance in Court to answer what shall be objected against him at such a Day, (which is called the *Return*) by the Complainant in his Bill: and it is called a *Subpœna*, because of the Words *sub Pœna centum Librarum* therein contained; though inserted only in *Terrorem*, for the Hundred Pound is never levied.

The Form of a Subpœna ad Respondendum, where only
one Defendant.

Subpœna
where one
Defendant.

Georgii Dei Gratiâ Magna Britannia, Frœnciæ & Hi-
bernia, Rex, Fidei Defensor, &c. Henrico Blunden Ar-
migerò Salutem. Quibusdam certis de Causis coram nobis
in Cancellaria nostra proposuis, Tibi præcipimus firmiter
injungentes, Quod omnibus aliis prætermisissis & excusatio-
ne quacunque cessante in propria personâ tuâ sis coram no-
bis in dictâ Cancellariâ nostrâ à Die Sti. Michaelis prox.
futur. in tres Septimanas (or any other Return, ut su-
pra) ubicunque tunc fuerimus, ad respondend. super iis
quæ tibi objiciuntur tunc ibid; Et ad faciend. ulterius &
recipiend. quæ dictâ Curia nostra consideraverit in hac
parte. Et hoc sub Pœna centum Librarum nullatenus omit-
tas. Et habeas tunc ibi hoc Breve. Teste meipso, apud
Westmonasterium secundo Die Julii Anno Regni nostri nono.
Parker.

Process im-
mediate.

But if your *Subpœna* is returnable immediately or
indilate, then instead of the Words, à Die Sti.
Michaelis, &c. say, indilate post receptionem hujus Brevis
ubi-

ubicunque, &c. and this Process *immediate*, can only be had when the Defendant lives in or near *London*, of which *Affidavit* must be made, and a Petition to the Master of the Rolls, and a Motion thereupon; which Petition may be in this Form, *viz.*

Wharton contra Dyer.

To the Right Honourable the Master of the Rolls.

The humble Petition of R. W. Complainant,

Sheweth,

“ That your Petitioner being sued at Law by the said Defendant, your Petitioner is advised to bring his Bill in this Court against the said Defendant, to be relieved against the said Action; and for that the said Defendant liveth at *Highgate*, near *London*, as by the *Affidavit* annexed doth appear.

“ Your Petitioner therefore humbly prays your Honour, That he may have a *Subpœna* against the said *Mary Dyer*, returnable *immediate*.

And your Petitioner shall ever pray, &c.

And this Writ is called a *Subpœna* to answer, and distinguished by that Name, in respect there are seven or eight other *Subpœna's* in order to farther Proceedings, *viz.*

A *Subpœna* for Costs.

A *Subpœna* to make better Answer.

A *Subpœna ad replicandum*.

A *Subpœna* to rejoin.

A *Subpœna ad revivendum*, &c.

A *Subpœna* for Witnesses to testify, &c.

A *Subpœna* to hear Judgment.

A *Subpœna pro Publicatione*.

A *Subpœna ducens tecum*, for Writings, Evidences, &c.

Touching the *Subpœna* to answer, you must be very careful there be no Mistake in the Body of the Writ, for that may prejudice the Plaintiff, and the Defendant may take Advantage of it, if he find any; but if there be a Mistake in the Label only of the Writ, no Advantage is to be taken by it.

This Writ may be made returnable three Ways; either *immediate*, or upon the common Days of Return,

A Petition for such Process.

Subpœna to answer.

Several sorts of *Subpœna's*.

Caution of Mistakes.

How returnable.

Of Writs of Subpœna ad Respondend.

turn, as from the Day of *Easter* in fifteen Days, &c. or upon a Day certain, after any of the usual Returns, or after any of the great Feasts, from whence the Returns take their Names according to the Directions, *supra* pag. 66, 67.

Prox. post, &c.

These Words, *prox. post*, or *prox. ante*, must be added where it is requisite; and where the great Feasts be either to come, or past, the Words *prox. futur.* must be transposed, as before is directed.

Serving thereof, how.

This Writ of *Subpœna* is to be served before the Return thereof be past, which they usually do, either by the Delivery of the Writ it self under the Seal, to the Person of the Defendant, or by shewing the Writ under Seal to him, delivering him a Note or Label of the Day of his Appearance; and this Note is more usual when there are more Persons than one in the *Subpœna*, so that the Body of the Writ may be reserved to be left with the last.

How left.

Or else the Writ may be left at the Defendant's Dwelling-House with one of his Family, or at his Place of Residence. See *Orders in Canc. pag. 115, 116.*

Upon the Door, &c.

It is conceived it may be a good Service to leave the Writ hanging upon the Door of the House, or to put it into the House under the Door, or within the Window of the House where the Party doth dwell, or usually reside. But that is where it is presumed it afterwards comes to his Hands, or that he might be in the House at the Time, or had Notice of it.

Same Day returnable.

Where a *Subpœna* is served on the self-same Day whereon it is returnable, it is a good Service if it be before Noon, and the rising of the Court in Chancery, and the Defendant so served, shall be bound to an Appearance with all Speed.

Against Husband and Wife.

Where a *Subpœna* is had against the Husband and Wife, and the Husband alone is served, and hath Notice that it is against him and his Wife, that is a good Service as to both; and for want of Appearance, an Attachment may be had, either against the Wife only, or against both. To which Purpose, see *Carie's Reports*, 89, 101, 103, 106, 109, 110.

Costs for want of *Subpœna*.

The *Subpœna* being served, the Bill was formerly to be put in, in due Time; or else if the Defendant appear'd, and no Bill be filed, they will get Costs. To prevent

prevents which, a Time was prefix'd for exhibiting the Bill after the Day of the Return of the *Subpæna*.

Time formerly allow-
ed for filing
the Bill.

As if the *Subpæna* was returnable upon a general Return-day, as *Crastino, Octabis, Tres Mens. &c.* after such or such a Feast, then had the Plaintiff Time to put in his Bill until the second Day before Noon next following the fourth Day following every one of the said Returns; and then account the Return-day, and the fourth Day after it, for two of the said four Days.

How *Subpæna's* are to be served.

But where the *Subpæna* was returnable upon such or such a certain Day of the Month, then the Bill might be filed the second Day after it before Dinner.

And by the Orders in Chancery, Page 115, 116, it is appointed, That every *Subpæna* to answer, revive, review, rejoin, to testify, or to hear Judgment, shall be served personally, or left at the Defendant's Dwelling-House, or Place of Residence, with one of that Family. And no Clerk of this Court shall issue any Attachment for not appearing, but upon Affidavit first made, positive and certain of the Day and Place of such Service of the *Subpæna*, and the Time of the Return thereof, whereby it shall appear that such Service was made, if in *London*, or within twenty Miles thereof, four Days at least, excluding the Day of such Service: And if above twenty Miles, then to have been eight Days before such Attachment enter'd: And that such Attachment shall not be discharg'd, but upon Payment of usual Costs, and so the succeeding Costs to be double.

Affidavit to be made of the Service.

Attachment for not appearing.

Every *Subpæna* to make a better Answer, shall also contain a Clause for the Payment of the Costs ordinarily paid in that Behalf, and the Plaintiff shall not be put to take out several Writs, nor to prosecute several Contempts as formerly used.

Subpæna pro meliori respon.

And if upon the Service of such *Subpæna*, the Costs be not paid, the Answer of such Defendant shall not be received or filed, unless the said Costs be also delivered and paid to the Plaintiff's Clerk, together with the said Answer. But Process of Contempt shall issue in that Case, as for want of an Answer, at the Return of the said *Subpæna*.

Costs.

And Note, A *Subpæna* to hear Judgment is to be served personally, or to be left at the House of the

Subpæna ad audiendum Judicium.

Party

Party with one of the Family, save that you are to give fourteen Days Notice exclusive before the Time, to hear Judgment; but if it be in the short Vacation, between *Easter* and *Trinity* Terms, you are to give but ten Days Notice, because of the Shortness of the Vacation.

Service on the
Attorney or
Clerk?

But in Case Oath be made, that the Defendant cannot be found so as to be served personally, and that he hath no certain Dwelling, or is beyond the Seas, &c. the Court will order, That the leaving of a *Subpoena* with his Attorney, or Clerk in this Court, shall be a sufficient Service.

Defendant
discharg'd.

And where the *Subpoena* was made returnable on a Return-day, in such Case, the next Day after the fourth Day was Costs Day; and if the Bill came not in the next Day at Noon, or presently after Dinner, (the Defendant having preferred his Costs the Day before) was discharged from attending with his Costs. But Note, That these Rules are now altered by the late Statute for Amendment of the Law, 4 & 5 *Anna*, cap. 16.

Low & alii, contra Baker & alios. Pas. 17 Car. 2.

A *Subpoena*
served on a
Defendant
here, ordered
to be good
Service for
the other
Defendants
beyond the
Seas.

The Defendants brought a joint Action at *Leghorn* against the Defendants, and had there arrested the Plaintiff's Goods; The Defendant *Baker* being here, and the other Defendants at *Leghorn*, *Baker* answered here, and by Order, a *Subpoena* left with him, was to be good Service for the other Defendants, and thereupon an Attachment for want of Answer; And upon this, an Injunction was granted to stay the Defendant's Proceedings at *Leghorn*, but it seems the Injunction was afterwards dissolved, 1 *Chan. Caf. 67.*

Costs to the
Defendant.

Where the Costs are not voluntarily paid for want of a Bill, either by the Plaintiff himself, or his Clerk, to the Defendant or his Clerk, in such Case the Defendant may have a *Subpoena* whereby to command the Complainant presently upon Sight thereof, to pay the Defendant, or the Bringer thereof, the said Costs: And this *Subpoena* must be served on the Plaintiff *Personally*, and upon such Service, if the Complainant do refuse to pay the said Costs accordingly, in such Case

Case the Defendant may (upon *Affidavit* made, that the *Subpœna* for Costs was served personally) have an Attachment directed to the Sheriff of the County where the Complainant lives, to attach the Complainant for the said Costs.

Affidavit.

And if the Sheriff of the County make Return upon that Attachment, that the Complainant cannot be found, then an Attachment with Proclamation may be sued forth against him: And that Proclamation being likewise returned by the Sheriff, as aforesaid, then a Commission of Rebellion may be sued forth against the Complainant.

Attachment for Costs.

Proclamation.

Writ of Rebellion.

And Note, when a Defendant has once appeared, or has a certain Clerk in Court, (of which Oath must be made) then upon *Affidavit*, that you cannot find the Person, to serve him personally with a Writ for Costs, you may obtain an Order to be left with the Clerk in Court. or otherwise, as the Court on a Motion, or Petition shall direct, and that to be deemed as good as if he had been personally served.

Order for Costs.

On the other Side, if the Plaintiff do in due Time file his Bill, and the Defendant appeareth not the next Day after Costs Day, then the Complainant upon Oath made, that the Defendant was served with a *Subpœna*, may have an Attachment, and farther Process, in case the Sheriff return the Party is not to be found, &c.

Attachment against Defendant.

The *Affidavit* that must be made of the Service of the *Subpœna*, must be made according as the Manner of the Service was; for if the *Affidavit* made do not prove a good Service, as before is set forth, no Attachment can be had upon it, and therefore he must swear as followeth:

Affidavit of serving Subpœna.

That he delivered the *Subpœna* to the Defendant, or that he shewed the *Subpœna* to the Defendant, under the Seal of the Court, and delivered to him a Note of the Day of his Appearance, or a Label of the *Subpœna*.

Delivery, &c.

Or that he left the *Subpœna* at the Defendant's Dwelling-House or Lodging, where the Defendant most abideth. *Vide* the Forms of these *Affidavits*, *infra*.

Leaving it.

Or

Of Writs of Subpœna ad Respondend.

Confession.

Or he may make *Affidavit*, that he heard the Defendant confess that he was served with a *Subpœna*. Or if the Party that makes *Affidavit*, can swear that he saw another (naming him) to serve the Writ as before; this will be sufficient to maintain the Attachment. *Vide post. 80.*

Return inserted.

There can be no Attachment regularly made out against the Defendant for not appearing, until there be certain and positive Oath made of Time, Place, and Manner of serving the *Subpœna*, inserting therein the Return of the Writ.

Attachment entered, &c.

And such Attachment must be entered in the House-Book of the Six Clerks, kept in that Office, and also in the Register's Book in his Office, expressing the Cause why it was issued.

And no Clerk of this Court shall issue any Attachment for not appearing, but upon *Affidavit* first made positive and certain, of the Day and Place of such Service of the *Subpœna*, and the Time of the Return thereof, whereby it may appear, whether the Party be in Contempt or not.

Commitment for a Contempt.

And where any Person served with a *Subpœna* doth Injury or Wrong, either by Word or Deed, to the Party who acted in Service of it, or doth set at nought or contemn the Writ it self, or the Authority of the Court from whence it issues, upon Oath made thereof, and Motion thereupon, such Person shall be committed to the Fleet, &c. *Carie's Reports*, 19, 92, 100. See after concerning Commitments.

Rule to answer.

Where there is Appearance made by the Defendant within the Time limited, and the Bill filed: In such Case the Complainant's Attorney may give unto the Defendant's Attorney on the said Day after the Costs-Day, a Rule, that the Defendant do make Answer to the Complainant's Bill by the same Day seven-night then next to come.

Attachment.

This Rule and Day must be entered in the Rule-Book, and in Case the Defendant fail to make Answer by that prefixed Day so entered, or if he do not otherwise satisfy the Court, by shewing sufficient Cause and Occasion of his Delay, then the Complainant's Attorney may have an Attachment against the Defendant.

Now

Note, This Writ of Attachment cannot be duly had, but where the *Subpœna* foregoing is duly obtained and served; for if the *Subpœna* be counterfeit, or if true, and not legally served, this Writ of Attachment in these Cases is udduly obtained, and the Defendant arrested by it, upon disclosing the Matter to the Court, will be discharged thereof.

Fault in Subpœna.

Defendant discharged.

An Attachment duly gotten for not appearing, may not be discharged till the Defendant have first paid 20*s.* Costs, if the serving of the *Subpœna* were upon his Person, otherwise it is but 10*s.* and every succeeding Process double so much: And upon Payment thereof, he is discharged of Course. See *Cary* 32, 72, 79, 94, 105.

Costs by Defendant upon an Attachment.

The Husband appeared, and the Wife not: An Attachment was granted against them both; *Abel's Case*, 19 *Eliz. ib.* 65.

Baron and Feme.

So he alone appeared, and put in a Demurrer in both their Names, without excusing her, Attachment was granted against both. *Spicer's Case*, *ib.* 39.

Attachment.

The Defendant made Oath he could not answer without Sight of Evidences, and had Time given him, and then afterwards put in a Demurrer: This Writ went out against him. *Pasc.* 21 *Eliz.* *Farmer's Case*.

Oath for Delay.

Where the Defendant is served with a *Subpœna*, and afterwards for not appearing, an Attachment issues against him; if he do not appear upon the Attachment, and the Sheriff do thereupon return (as in the like Cases he doth) a *Non est inventus*, then there will issue forth against him a Proclamation of Rebellion; wherein observe that this Process of Contempt, and all Attachments in Process are to be discharged upon the Defendant's Payment, or Tender to, and Refusal of it, by the Plaintiff's Clerk, of the ordinary Costs of Court, and filing of his Plea, Answer or Demurrer, as the Case is, without any Motion in Court: And if the Plaintiff do prosecute the Contempt afterwards, the Defendant will be discharg'd with Costs.

After Attachment.

Writ of Rebellion.

Process discharged, &c.

Where an Attachment is had, if the Sheriff do not make his Return, a Day will be given, and if he do not by that Time, the Court will set an Amerciament upon him. See *Cary's Reports*, 44, 77, 78. Orders in Chancery.

Sheriff amerced.

Where

Commission
of Rebellion.

Where any Party is attached, and afterwards proclaimed, and he comes not in, but stands farther out in Contempt, in such Case a Commission of Rebellion may be issued out against him for the Apprehension of him, and bringing him into the *Fleet*, (the proper Prison of this Court.)

To whom.

This Commission of Rebellion is sometimes directed to the Sheriff, and sometimes to private Persons, as in the Case of *Cage and Elrington*, *Trin. 3. Jac.*

Disobeying
Orders, &c.

This Course is likewise taken against those that yield not Obedience to Orders or Decrees, or refuse to pay Costs, or stand otherwise in Contempt of the Court.

Commission-
ers commit-
ted.

Where those private Persons who are made Commissioners having taken the Person in Contempt, suffer him to escape, they themselves will be committed till they bring him in, as in the Case of *Sacheverel* against *Sacheverel*, *Hillary-Term, 18 Jac. Tothil 38.*

Rescue.

If any Person rescue one taken upon a Commission of Rebellion, the Rescuer is to be committed.

Escape by
Commission-
ers.

Where the Commissioners upon Commission of Rebellion let the Party in Contempt go where he list, whereby he made an Escape, they were ordered to be committed to the *Fleet* till they pay the Debt. See *Nelson's Case* against *Telverton*, in *Trin. 18. Jac. Tothil 39.*

Serjeant at
Arms.

Where the Parties appear not, but stand farther out in Contempt, a Serjeant at Arms may be sent out to take him; and if he cannot take him, or that he resist, or having taken him he make an Escape, and so persist high in his Contempt, in such Cases a Sequestration may be had of his Land: And if the Suit be for Land, to be delivered to the Plaintiff by the Sheriff, or by other Commissioners for that Purpose, as in the Case of *Boles* against *Walley* and his Wife, *Carie's Reports, 38, 58, 105, 106. Vide post.*

Sequestrati-
on, &c.

Another Subpœna, ad respondendum.

Subpœna ad
respondendum.
Vide ante Page
68.

*Anna Dei Gra. Mag. Brit. Fra. & Hib. Regina fidei
Defenser, &c. A. B. C. D. & E. F. & G. uxori ejus
salutem Quibusdam certis de causis coram nobis in Cancel-
laria nostra propofuis vobis precipimus firmiter injungentes
Quod*

Quod omnibus aliis pretermisſis & excuſatione quacunque ceſſante in propria perſona veſtra ſuis coram nobis in dicta Cancellaria noſtra in Craſſino Sta. Trinitatis proxim' futur. abicunq; tunc fuerimus ad reſpondend. ſuper iis qua vobis obſcientur tunc ibid & ad faciend. ulterius & recipiend. qua Curia noſtra conſideraverit in hac parte. Et hoc Subp^{na}na Centum Librarum nullatenus omittas (vel omittatis) & habeas (vel habeatis) hoc breve Teſte meipſa apud Weſtm. 10^o Die Julii Anno. Reg. noſtri 13^o.

Note, a Subp^{na}na ad Comparendum is now ſeldom uſed, the above Proceſs ad reſpondendum including both to appear and anſwer, and therein you may put three Defendants, as in the Precedent above, a Man and his Wife being but one; and a Subp^{na}na to make a better Anſwer, is the ſame with the above, only inſtead of the Words ad reſpondendum, ſay ad faciend. melior Reſponſ.

But if any of the Defendants be a Nobleman, then no Subp^{na}na is awarded againſt him, but a Letter inſtead thereof is ſent to him by the Lord Chancellor or Keeper, thus,

My Lord,

“ After my very hearty Commendations to your
 “ Lordſhip, Whereas there has been of late a
 “ Bill of Complaint exhibited in the Court of Chan-
 “ cery againſt your Lordſhip, by P. R. Gent. Plain-
 “ tiff, I have thought good to give you Notice there-
 “ of, rather by this Letter, than by awarding her
 “ Majeſty's ordinary Proceſs againſt you. Where-
 “ fore theſe are to pray your Lordſhip to give Or-
 “ der for the taking out a Copy of the ſaid Bill, and
 “ for the putting in of your Anſwer thereunto, ac-
 “ cording to the uſual Courſe in ſuch Caſes, at or
 “ before the Morrow of Holy Trinity next. Of the
 “ which, nothing doubting but that your Lordſhip
 “ will have the Care and Regard which thereto ap-
 “ pertaineth, I bid your Lordſhip heartily farewel,
 “ and am,

Letter to a
Nobleman.

Your Lordſhip's

To the Right Noble,
 Ge. T Marſh. of W.

very loving Friend,

Harcourt C. S.

But

Of Writs of Subpœna ad Respondend.

But if such Noble Man appear not upon such Letter sent him as aforefaid, then Process of Subpœna may be awarded against him. But the following Process can be only a *Distringas*, with an *alias* & *pluries*, &c. For no Attachment can be had against him.

A Subpœna for Costs, by Order of Court.

Georgius Dei Gratia, &c. to *Injungentes quod tu solvas vel solvi facias C. D. &c. 10 s. qui eidem (vel eisdem if more than one Defendant) C. &c. adjudicat. fuer. in Cancell. præd. pro Expensis suis (suorum) occasione injuste vexation. Quæ ipse (ipsis) nuper indebite sustinuit (sustinuer.) in quadam Billa vers. ipsum (ipsos) C. &c. in eadem Canc. ad prosecutionem tuam nuper fact. juxta formam Stat. inde edit. & provisi vel tuipse sis coram nobis in dicta Canc. nostra (the Day of the Return) ubicunq; &c. ad respondendum super iis quæ tibi objicerentur tunc ibid. &c.*

For Costs for want of a Bill.

Georgius, &c. to *Sustinuerunt occasione cujusdam brevis nostri de Subpœna eis direct. ad secta. tuam prosecut. ad comparend. coram nobis in dicta Cancell. nostra ad cert. diem jam præterit. pro eo quod tu ad diem in dict. brevi content. aliquam Billam sive materiam versus eos minime exhibueris vel tuipse sis, &c.*

For Costs for not prosecuting with Effect.

Georgius, &c. to *Quod tu solvas vel solvi facias præfat. C. 10 s. qui eidem C. adjudicat. fuer. in Cancell. prædict. pro expensis suis occasione injust. vexationis quæ ipse nuper indebite sustinuit in quadam Billa versus ipsum C. in eadem Canc. ad prosecutionem tuam nuper fact. juxta formam Stat. &c.*

Subpœna ad audiend. Judic.

Georgius, &c. A. B. salutem. *Precipimus vobis firmiter injungendo quod excusatione quacunq; cessan. in propriis personis vestris suis coram nobis in Cur. Cancellar. nostre ubicunq; tunc fuerit (tali die & sessione) ad audiend. Judicium & finalem determinationem, &c. inter C. D. Quer. & te præfat A. B. Defen. adhuc indeterminat. penden. & hoc nallatenus omittatis, &c.*

Subpœna ad Revivend. Causam.

Georgius, &c. E. F. Salutem *Quibusdam certis de causis coram nobis in Canc. nostra propositis tibi præcipimus firmiter injungendo quod omnibus al. prætermisissis & excusatione*

satione quacunq; cessan. in propr. persona tua sis coram nobis in dicta Canc. nostra (tali die) ubicunq; tunc fuerit ad ostendend bonam & sufficientem Causam quare quandam Querimon. (vel quoddam Decretum) & process. superinde *Vel Decret.* inter W. B. Querentem & F. G. Patrem tuum nuper Defunctum Defendent. in pradieta Canc. nostra antehac Exhibitam (vel fact.) non reviviscata forent. (and if a Decree, say, geren. dat. (tali die ult. praterit.) & ad ulterius faciend. & recipiend. quod dicta Cur. nostra Canc. prad. in ea parte consideraverit & hoc nullatenus omittas, &c.

Georgius, &c. (ut supra) to quare quoddam Decretum per pradiet. Curiam nostram antehac fact. in materia *Subpcena scire facias, for nuper in controversia inter W. B. Querentem & G. F. Defunctum Defendent. non performaretur sicut per prafat. not performing d Decree.* G. F. fieri debuit secundum effectum veramq; intentionem Decreti pradiet. & ad faciend. ulterius & recipiend quod dict. Cur. nostra consideraverit in hac parte. Et hoc sub periculo incumbente nullatenus omittas. Teste, &c.

Georgius, &c. (as in the Subpcena ad revivend. supra *Subpcena ducto ubicunq; tunc fuerit) ad proferend. tecum tunc & ibidem ces tecum for in dicta Canc. nostra quadam fact. & script. qua per Respons. tua ad Querimon. A. B. nuper in Canc. nostra exhibitam in manibus & Custod. tuis remanere confessus es vel Writings confess'd in the Answer.* tunc & ibidem bonam & sufficient. Causam in contrar. inde ostend. vel ostendi faciend juxta direction. cujusdam ordinis in eadem Cur. Canc. nostra inter dictos Quer. & prafat. Def. fact. & reddit geren. Dat. (tali die, &c.) Teste, &c.

Georgius, &c. proposuis, & in quodam ordine in dicta Cancellaria nostra inter P. R. Quer. & te prafat. A. & al Defenden. geren. Dat. vicesimo primo Die Julii nuper fact. particulariter mentionat. & express. Tibi precipimus *Another Duces tecum for other Writings.* firmiter injungendo quod, &c. (ut ante) in propr. persona tua sis coram nobis in dicta Cancellar. nostra ubicunq; tunc fueris ducens vel duci faciens quoddam Scriptum sub manibus & sigillis prafat. quer. & patris sui. Et notam quandam, &c. qua per Responson. tuam quarimon. prad. Quer. adhibitar. in Custodia tua existere confessus es, vel tunc & ibid. ostendens vel ostendi faciens bonam & sufficientem Causam in contrarium inde secundum tenorem & veram intentionem ordinis prad. & hoc sub periculo incumbente. Teste, &c.

This

How awarded.

This *Subpœna duces tecum*, is awarded when the Defendant has confess'd by his Answer, that he hath such Writings in his Hands, as are prayed by the Bill to be discovered or brought into Court.

How sued out.

And *Note*, when the Defendant by his Answer confesses the having in his Hands or Custody any Writings material for him to be examined upon, or confessed to belong to the Plaintiff, a *Subpœna duces tecum* may be taken out by the Plaintiff (of Course without Motion) for the Defendant to bring them into Court, or to shew Cause why he ought not,

Title shewn by the Defendants.

But if the Defendant either does not confess the having such Writings in his Hands, or makes his Title to the Matter in Question by them, or shews any Title to the said Writings by his Answer, he will be excused from any Contempt, tho' he neither brings them into Court, nor shews Cause to the contrary.

Costs to the Defendant.

And if the Plaintiff shall notwithstanding prosecute a Contempt in that Behalf (and the Case upon the Defendant's Answer, appears to be such) the Defendant shall be thereof discharged, and have his Costs.

And all *Subpœna's* for Costs, and *Duces tecums*, have but one Person named therein, to whom they are directed, and they are to be served on such Person personally.

Vide ante
p. 73, 74.

If any of the Defendants do not appear at the Return of the *Subpœna ad Respond.* then, upon Affidavit made before some Master of Chancery, of the Service of the *Subpœna*, as that it was served on the Defendant himself, or left at his Dwelling-House with his Wife or Servant, or hanged at his Door, &c. so that it might be presumed he had Notice thereof, or if the Deponent swears, that he did see another serve him therewith, or that he heard the Defendant confess he had been served, &c. In such Cases an Attachment may be awarded against the Defendant.

Attachment against Husband and Wife.

And *Note*, If the *Subpœna* be against the Husband and his Wife, and the Husband only appears, but not the Wife, an Attachment shall issue against both. See *Cary's Reports*, 32, 72, 79, 94, 105. And therefore in such Cases, the Husband is to enter an Appearance both for himself and his Wife.

And

And the Form of the Affidavit may be thus, viz.

" A. B. Gent. maketh Oath, That he this Depo- Affidavit.
 " nent did, on the --- Day of, &c. serve the Defen-
 " dant T. R. with a Writ of Subpœna out of this ho-
 " nourable Court, by delivering the said Writ under
 " Seal to the said T. R. whereby the said T. R. was
 " directed to appear in the said Court on the Mor-
 " row of the Holy Trinity next, at the Suit of P. L.
 " Complainant.

Fur. 22 die Augusti 1714.

coram J. H.

Another Affidavit, where there are several Defendants.

" P. L. the Plaintiff in this Cause, maketh Oath, Several De-
 " That on the --- Day of --- last, he the Deponent did fendants.
 " serve the Defendant G. H. and on, &c. did serve
 " the Defendant J. K. and on, &c. did serve the De-
 " fendant L. M. with a Writ of Subpœna under the
 " Seal of this honourable Court, by delivering to
 " the said G. H. and J. K. two Labels thereof, and
 " by shewing them the Body of the said Writ under
 " Seal, and by delivering the Body of the said Writ
 " unto the said L. M. by which Writ the said De-
 " fendants were directed to appear on, Day of,
 " &c. at the Deponent's Suit.

And the Writ of Attachment thereupon is in this
 Form, viz.

Georgius, &c. Vicecom. Devon. salutem. Tibi Præcipi- Attachment.
 mus quod Attachias G. H. Ita quod cum habeas coram
 nobis in Cancell. nostra in Crastin. sanct. Trin. prox. futur.
 (or other Return) ubicunq; tunc fuerimus ad respond. no-
 bis tam de quodam Contemptu per præsat. G. H. nobis illat.
 ut dicitur quam super hiis quæ sibi tunc ibidem objiciuntur
 Et ad faciend. ulterius & recipiend. quod Cur. nostra con-
 sideraverit in hac parte. Et hoc nullatenus omittas Et ha-
 beas ibi hoc breve. Teste, &c.

And if the Defendant cannot be found thereupon, Return'd non
 so that the Sheriff returns a *Non est inventus in Balliva* est inventus.

G

sua

Injunction.

sua, then in Cases where the Plaintiff's Suit is for staying Proceedings at Law, the Court sometimes will grant an Injunction; tho' this by the late Act ought to be granted together with the *Subpoena ad respond.* and is so prayed by the Bill. *Vide ante*, Chap. 3.

And thereupon the Defendant's Suit at Law is to be stayed till the Defendant appears and answers the Plaintiff's Bill, and satisfies the Court touching the Contempt.

Attachment with Proclamations.

But in ordinary Cases, after the first Attachment is returned *non est invent.* the Plaintiff proceeds to take out an Attachment with Proclamations; which Writ, upon Return of the former, as aforesaid, is issued of Course, and is in this Form, *viz.*

Attachment with Proclamations.

Georgius, Dei Gratia, &c. Vicecom. Dev. Salutem. *Præcipimus tibi quod in omnibus & singulis locis infra Bailiviam tuam tam infra Libertat. quam extra ubi magis expedire videris ex parte nostra publice proclamari facias, quod A. B. sub Pœna Ligeantia sua coram nobis in Curia Cancellarie nostræ in Octabis Sti. Michaelis proxim. futur. (or other Return) ubicuncq; tunc fuerimus personaliter compareat. Et nihilominus si præsat. A. B. interim invenire poteris ipsum attachias, ita quod eum habeas coram nobis in Curia nostra prædict. ad Diem prædict. ad respondend. nobis tam de quodam Contemptu per præsat. A. B. nobis illat. ut dicitur quam super hiis quæ sibi tunc ibidem objicient. & ad faciend. ulterius & recipiend. quod dicta Curia nostra consideraverit in hac parte. Et hoc nullatenus omittas & habeas ibi tunc hoc breve. Teste, &c.*

Particular Jurisdictions.

But note, in these Attachments, and all other Writs that are to be issued, a particular Regard ought to be had to the Jurisdiction and Privilege of particular Places, as the Cinque-Ports, and the Counties Palatine of Lancaster, Chester, and Durham; and therefore the Direction of the Writs in such Cases, is of a peculiar Form: As for Instance, Where an Attachment issues against an Inhabitant of Hastings, Rye, Romney, &c. it is directed to the Lord Warden of the Cinque-Ports thus, *viz.*

Cinque-Ports.

Georgius Dei Gratia, &c. Prædilecto & fideli suo, T. D. Militi Domino de C. Constabulario Castri sui de Dover ac Deputat. suo in officio Custodis Quinque-Portuum suorum Salutem. *Vobis mandamus quod sub Sigillo Officii vestri*
Bal-

Ballivo Liberat. de Hastings, (or any other of the Cinque-Ports) vel Majori, vel Ballivis & Furatoribus antiquæ Villæ de R. &c. (as the Case is) Detis in mandatis quod attachiat (vel attachiant) A. B. Gen. Ita quod eum habeat (vel habeant) coram nobis in Cancell. nostra in Crastino omnium Animarum prox. futur. (or other Return) ubicunque tunc fuerimus ad respondend. &c. (as in the first Attachment) in hac parte. Et hoc nullatenus omittas, & habeas ibi Breve quod tibi inde devenit. Teste, &c.

And if the Writ is to be executed within the County Palatine of Lancaster, then it is directed thus, viz. *Georgius Dei Gratia, &c. Prædilecto & fideli suo T. Domino de M. Cancellar. suo Ducatus sui Lancastriæ vel ejus Deputat. ibid Salutem. Vobis mandamus quod per Breve nostrum sub Sigillo nostro Comitatus nostri Ducatus prædict. Vicecomiti nostro ejusdem Comitatus detis in mandatis quod attachiat. A. B. Gen. Ita quod habeat eum, &c.*

Com. Pal. Lancastriæ.

And if the Attachment be awarded against any dwelling within the County Palatine of Chester, then it is directed to the Chamberlain of Chester in this Form, viz. *Georgius Dei Gratia, &c. T. Domino F. Camerario nostro Cestriæ, vel ejus Locumtenenti, Salutem. Mandamus vobis quod per breve nostrum sub Sigillo nostro Comitatus nostri Palatini Cestriæ detis in mandatis Vicecomiti Comitatus prædict. quod attachiat A. B. Gen. Ita quod, &c. as before.*

Com. Pal. Cestriæ.

And note, Attachments for Costs are of the like Form as those above, only the Writ is endorsed thus; *Per Cur. ad Sextam D. E. & al. quia Def. non solvit Expens.* There is another kind of Attachments called *Attachments of Privilege*: But of these see hereafter in the Chapter of *Suits* by or against privileged Persons.

Attachments. for Costs, &c.

The Return of the Attachment by the Chamberlain of Chester is thus, viz. *Responsio T. Dom. F. Camerar. Com. Palatin. Cestriæ: Virtute istius Brevis mihi direct. Per Breve Domine Regine sub Sigillo Com. Palatini prædict. Dedi in mandatis prout ulterius mihi præcipitur Vicecomiti Comitatus prædict. qui mihi sic respondit ut sequitur, viz.*

Return of the Attachment, in Com. Cestr.

Of Writs of Subpoena ad Respondend.

And then follows the Return of the Sheriff, thus :
Infranominat. A. B. non est inventus in Balliva mea.
 Johannes Lloyd Miles Vic. Com. Cestr.

And hereunto the Chamberlain ought to set his Name and Seal of Office.

Sheriff amerced.

And note, in all Cases where the Sheriff does not make his Return of the Writ, if directed to him, this Court will amerce him; which Amercements are to be estreated in the *Exchequer*, and are commonly 5*l*.

Costs on Attachments, &c.

And note, When an Attachment is duly gotten, it cannot be discharged till the Defendant has paid 10*s*. Costs, and every succeeding Process double; but upon Payment thereof, and filing his Answer, Plea or Demurrer, he is discharged of Course.

Commission of Rebellion.

When an Attachment with Proclamations is returned *Non est inventus* by the Sheriff, then there issues a Commission of Rebellion, which is directed to such Commissioners as the Plaintiff nameth: And in the Case of *Gay and Erlington, Tortil 37.* 'tis said, a Commission of Rebellion is always directed to private Persons, usually to six or seven, and not to the Sheriff.

The Form of a Commission of Rebellion is thus;

The Form.

Georgius, &c. Dilectis sibi C. D. E. F. G. H. &c.
 Salutem. Quia A. B. cum per publicas Proclamationes per Vic. Devon. in diversis locis ejusdem Com. Virtute Brevis nostri eidem Vic. direct. ex parte nostra fact. precept. fuit, quod idem A. sub Poena Ligeanc. sue coram nobis in Cancell. nostra ad certum Diem jam praterit. personaliter compareret, Mandato tamen nostro in ea parte parere manifeste contempserit; Ideo vobis conjunctim & divisim mandamus quod prelat. A. B. ubicunque fuerit invent. infra Regnum nostrum Magna Britannia tanquam Rebelle & Legis nostr. Contemptorem attachiatis vel attachiari faciatis, ita quod eum habeatis, vel haberi faciatis coram nobis in dicta Cancellaria nostra (at such a Return) ubicunque tunc fuerimus ad respondend. super hiis que sibi obijcientur tunc ibid. & ad faciend. ulterius & recipiend. quod dicta Curia nostra consideraverit in hac parte, & hoc nullatenus omittatis: Damus etiam universis & singulis Vice-

Vicecomitibus, Majoribus, Ballivis, Constabulariis & aliis Officiariis, & Ministris ligeis & Subditis nostris quibuscunque, tam infra Libertates quam extra, tenore presentium firmiter in Mandatis quod vobis & cuilibet vestrum in executione premissorum attendentes sint & assistentes in omnibus diligenter prout decet. In cujus rei Testimonium, has Literas nostra fieri fecimus Patentes. Teste, &c.

And note, If a Commission of Rebellion issues against any Person for a Contempt in not appearing on the *Subpœna*, and other subsequent Process aforesaid, the Commissioners may break open his House to take him because of his Contempt to the Law and the Queen. They may also by Vertue of the said Commission, break open the House of any other Person where he is, (altho' a Man's House is his Sanctuary and Castle) as a Sheriff may in the Case of an Outlawry, 5 Co. 92. For by this Commission he stands outlawed as a Rebel and Contemner of the Laws; of which he cannot purge himself till Appearance.

Commissioners may break open Doors.

But note, upon Process of Attachments, or Attachments with Proclamations, the Sheriff or his Officers cannot break open the House of any Man.

Not so on Attachments.

Where those private Persons that are Commissioners have taken the Person who is in Contempt; if they suffer him to escape, they themselves will be committed till they bring him in. *Hill. 18. Jac. 1. Sacheverel versus Sacheverel.*

Commissioners committed.

And where the Commissioners having taken the Party in Contempt, afterwards let him go where he pleas'd, whereby he made his Escape, the Court ordered they should be committed till they paid the Debt. *Trin. 1 Jac. 1. Nelson and Yelverton.*

And therefore 'tis necessary and usual for the Commissioners in a Commission of Rebellion, to take a Bond from the Person so in Contempt, with one or more sufficient Sureties for the Party's Appearance, &c. in the following Form.

Bond to the Commissioners for Appearance, &c.

Noverint universi per Præsentes nos, A. B. de L. Gen. J. H. de M. &c. teneri & firmiter obligari C. D. de M. pradiſt. Ar. E F. de L. & G. H. de L. Gen. &c. in ducentis Libris legalis Monetæ Magn. Britan. solvend. eisdem

Of Writs of Subpoena ad Respondend.

C. D. E. F. G. H. &c. vel alicui eorum, aut suis certis Attornat. Executoribus, Administratoribus vel assignatis suis, ad quam quidem solutionem bene & fideliter faciend. obligamus nos & quemlibet nostrum per se pro toto & in solido Heredes, Executores & Administratores nostros firmiter per Praesentes Sigillis nostris sigillat. dat. primo Die Julii Anno, &c.

The Condition of this Obligation is such, That if the above-bounden A B. Gen. shall and do personally appear before our Sovereign Lord the King, in his Majesty's High Court of Chancery on the Morrow of All Souls now next coming, upon a Commission of Rebellion issued out of the said Court against him at the Suit of T. D. and shall answer as well for his said Contempt, as for all such Things as shall be then and there objected against him, and do and perform what the said Court shall award, or order in that Behalf, that then this present Obligation to be void, or else to stand and be in full Force, &c.

A. B.
J. H.

Note.

Costs, &c.

And note, when the Party is taken either upon an Attachment, Proclamation, or Commission of Rebellion, he ought to pay Costs, and to enter his Appearance with the Register, or else to give Bond to answer his Contempt, &c. otherwise he will be committed to the Fleet till he has paid the Costs, and answered the Plaintiff's Bill.

Supersedeas to an Attachment.

But if the Defendant appears before he is taken by any of those Writs, then a Supersedeas may be had to such Writ, without paying Costs to the Complainant: But it is usually granted on Motion and Affidavit, shewing Cause for it.

A Supersedeas to an Attachment is in this Form, viz.

Georgius, &c. Vic. D. Salutem. Licet nos nuper per Breve nostr. tibi preceperimus quod attachiares A. B. Ita quod eum haberes coram nobis in Cancellaria nostra ad certum Diem in dicto Brevi content. ubicunque tunc foret ad respondend. nobis tam de quodam Contemptu per praesat. A. B. illat, ut dicebatur, quam de aliis sibi tunc ibid. objiciend.

ciend. *Quibusdam tamen certis de Causis nos jam movent. tibi precipimus quod executioni Brevis nostri prædict. versus præfat. A. B. fact. vel faciend. Supersedeas omino. Et si ipsum A. B. ea occasione ceperis tunc ipsum à Prisonâ qua sic detinetur, si ea occasione, & non aliâ detineatur in eadem, sine dilatione deliberari facias. Teste, &c.* And the like Form may be observed *mutatis mutandis*, in a Superse-
deas to an Attachment with Proclamations.

Proclamati-
on.

A Supersedeas to a Commission of Rebellion, is in this Form, viz.

Georgius, &c. Dilectis sibi C. D. &c. (id est, the former Commissioners) Salutem. Licet per Literas nostras Patentes vobis conjunctim & divisim mandavimus quod A. B. ubicunque invent. foret infra Regnum nostrum Mag. Brit. tanquam Rebellem & Legis nostræ Contemptorem attachiatis, vel attachiare faciatis, Ita quod eum habeatis, vel haberi faciatis coram nobis in Cancell. nostra ad certum Diem in eisdem Literis Patentibus content. ad respondend. nobis tam de quodam Contemptu per præfat. A. B. illat. ut dicebatur quam de aliis sibi tunc ibid. objiciend. prout in eisdem Literis plenius continetur. Quibusdam tamen certis de Causis nos jam specialiter moventibus vobis & cuilibet vestrum mandamus quod cuicunque execut. Literarum nostrarum Patent. prædict. per vos seu aliquem vestrum fact. vel faciend. versus prædict. A. B. Supersedeatis omnino prædict. Literis Patent. in contrar. in aliquo nonobstante. Et si ipsum A. B. prætextu Literar. Patent. prædict. ceperitis, seu aliquis vestrum ceperit, tunc ipsum à Prisonâ (&c. ut supra, to) deliberari faciatis. Teste, &c.

Commission
of Rebellion.

A Supersedeas to the Chancellor of the County
Palatine of Lancaster.

Georgius, &c. T. Domino de M. Cancellario suo Ducatus sui Lancastr. vel ejus Deputat. ibid. Salutem. Quia A. B. &c. vobis mandamus quod per Breve nostrum sub Sigillo nostro Comitatus Ducatus Lancastr. Custodibus Pacis nostræ in di. Co Com. Lanc. ac Vic. ejusdem Com. & eorum cuilibet detis in mandatis, &c.

Com. Palat.
Lancastria.

Of Writs of Subpoena ad Respondend

A *Superfedeas* to the Chamberlain of the County Palatine of *Chester* is thus:

Com. Palat.
Cestria.

Georgius, &c. T. Domino F. Camerario suo Cestrie vel ejus Locumtenenti, Salutem. Quia A. B. &c. vobis mandamus quod per Breve nostrum sub Sigillo nostro Comitatus nostri predicti. tam Justiciariis nostris apud Cestr. quam Justic. nostris. ad Pacem in Com. Cestr. conservand. assignat. ac Vic. ejusdem Com. & eorum cuilibet, Detis in mandatis, &c.

Defendant
discharged.

By Vertue of which *Superfedeas* so procured as aforesaid, tho' the Defendant be taken upon any of the foregoing Processes, and kept in Custody by the Sheriff or Commissioners, and detained in Prison by them, yet in serving them with this Writ, and paying Costs, and giving Bond for his Appearance, as aforesaid, he is to be discharged out of Prison, and from the Contempt.

But where the Defendant appears not on the Return of the Commission of Rebellion, nor procures such *Superfedeas* as aforesaid, but stands further out in Contempt, then the Plaintiff's Counsel, by Motion in Court, and producing the said Commission, returned with a *Non est inventus*, may thereupon have his Lordship's Order for a Serjeant at Arms to be sent to take such Defendant.

Serjeant at
Arms.

Process, how
returned by
the Sheriff.

And *note*, no *Process* is to be returned by the Sheriff with a *Non est inventus*, except such Process be made into the County where the Party lives; but the Person in Contempt may be arrested upon such Process in any Place where he can be met with.

Teste and Re-
turn.

Also there must be fifteen Days between the *Teste* and Return of every Process after the *Subpoena*; and after the former Process returned, the succeeding Process goes presently, *id est*, the subsequent Process must bear *Teste* the same Day that the former Process is returnable.

Costs and
Appearance.

And when the Party is taken upon any of these Processes, he must pay Costs, and either give his Bond with Sureties for his Appearance, as aforesaid, or enter his Appearance with the Register. See the Manner of entring Appearances in the next Chapter.

Note,

Note also, the Plaintiff ought to use his best Endeavours, that every one of the said several Processes be duly served and executed upon the Party prosecuted. For if it be made appear to the Court, that he has been guilty of any wilful Default or Neglect therein, he shall pay good Costs to the Party grieved, and lose the Benefit of such Process so returned, without using such Endeavours. *Vide Ord. Cham. 14, 15, 128.*

Plaintiff's
Neglect.

But if the Party in Contempt cannot be taken by the Serjeant at Arms, or if he resist the Serjeant, or when he is taken make his Escape, and so persist in his Contempt; in such Cases, upon *Affidavit* of such Contempt, and a Motion thereupon, a Sequestration may be had of his Lands.

Sequestra-
tion.

And if the Suit be for Lands, then a Sequestration will be granted of all his Lands, Tenements, and Hereditaments, with an Injunction for the Profits of the Lands, Tenements, &c. to be delivered to the Plaintiff by the Sheriff, or the Commissioners for that Purpose named in the Commission of Sequestration.

Sequestrati-
on.
And Injunc-
tion.

The Sequestration is a Commission usually directed to seven Persons therein named, and empowering them to seize the Defendant's real and personal Estate into their Hands, (or, it may be some particular Part or Parcel of his Lands) and to receive and sequester the Rents and Profits thereof, until the Defendant shall have answered the Plaintiff's Bill, or performed some other Matter which has been ordered and enjoined him by the Court, for not doing whereof he is in Contempt.

A Commission of Sequestration for not appearing, where the Defendant has stood out all Processes of Contempt, and a Serjeant at Arms.

Georgius Dei Gratia, &c. Dilectis sibi J. H. G. T. W. D. E. G. R. T. L. K. & C. B. Gen. Salutem. Cum D. E. Quer. quandam Billam & Petitionem suam de Querimoniâ coram nobis in Cancellariâ nostrâ versus A. B. Defendentem exhibuit. Cumq; prefat. Defendens cum Breui nostro de Subpœnâ ad queremoniam prædictam comparend. & respondend. debite inservit. fuit, ita tamen agere omnino recusavit, unde versus eum special. Process. dictæ Curie

Sequestration
for not ap-
pearing after
a Serjeant at
Arms.

Of Writs of Subpœna ad Respondend.

Curia nostræ usque ad servien. ad Arma emanarunt, Acetiam pro eo quod serviens ad Arma Curia nostræ prædict. præfat. Defendentem nusquam venire certificavit velut per certificationem suam in eâ parte manifeste apparet. Sciatis igitur quod nos æquam & justum fieri volentes de fidelitat. & providis circumspectionibus vestris plurimum confidentes in complemento cujusdam ordinis dictæ Curie nostræ inter partes prædict. fact. geren. dat. (tali die, &c.) Dedimus vobis tribus vel duobus vestrum plenam potestatem & auctoritatem in & super Messuag. Terr. Tenement. & Hereditament. quæcunq; prædict. A. B. accedend. ingrediend. & intrand. ac omnia Reddit. Exit. & Proscua, Commoditat. & Emolument. quæcunque Messuag. Terr. Tenement. & Hereditament. & Real. Stat. prædict. A. B. Necnon omnia & singula Bona & Catalla quæcunque & Stat. Personal. præfat. A. B. ubicunque invenire possitis in manus vestras trium vel duorum vestrum capiend. levand. & colligend. seu levari capi & colligi faciend. illaque sequestrand' prout eadem tenore præsentium sequestramus Et ideo vobis tribus vel duobus vestrum mandamus quod diebus locis & horis ad hoc congruis & opportunis ad dict. Messuag. Terr. Tenement. & Hereditament. quæcunque præfat. A. B. accedatis eademque intretis & ingrediamini, ac omnia Reddit. Exit. & Proscua Commoditat. & Emolument. quæcunq; prædict. Messuag. Terr. Tenement. & Hereditament. ac Stat. Real. Necnon omnia & singula Bona & Catalla & Stat. personal. quæcunq; præfat. A. B. ubicunque invent. fuerint in manus vestras trium vel duorum vestrum levetis, capiatitis vel colligatis, seu levari, capi & colligi faciatitis, illaque sub hujusmodi tuto & salvo sequestro conservetis & custodiatitis donec & quousque præfat. A. Quereimon. prædict. plene & perfecte responderit, & pro Contemptibus omnibus suis plenar. satisfecerit dictaque Curia nostra aliter ordinaverit in hac parte specialiter. Teste meipso apud Westm. &c.

Johan. Trevor Magist. Rotulor.

Another

Another Sequeſtration (reciting a former, &c.) for the Commissioners to enter upon all the Eſtate of the Defendant, and to ſequeſter the Rents, Iſſues, and Profits thereof, until he ſhall have answered the Plaintiff's Bill, and taken off his Contempts. &c.

Georgius Dei Gratiæ, &c. Dilectis, &c. Salutem Cum P. R. Ar. Quer. quandam Querimoniam ſuam coram nobis in Cur' Canc' noſtr' verſ' R. S. Militem & Baronetum Defendantem (tali die ult' præterit') exhibuerit, Relevium ſibi petens adhiberi pro Materiis in eadem contentis. Quodque cum præſat' Defendens Brevi noſtro de Subpœna ad comparend' & Querimon' prædict' respondend' debite inſervit' exiſtens ita agere recuſat. Et ideo (tali die) tunc prox' ſequen' ordinatum fuit quod Commiſſio noſtra ad ſequeſtrandum Personalem Stat' dicti Defend', ac redditus exitus & proficua Realis Status ipſus Defendantis, donec Queremon' prædict' perfecte reſponderet, & alius ordo in contrar' inde fact' foret & è dicta Cur' noſtrâ emanaret, niſi præſat' Defendens ſuper notiſiam Clerico ſuo in dicta Cur' noſtra prius datam Cauſam in contrar' inde infra biduum oſtenderet. Jamque ſuper auditu Conſiliariorum ex utraq; parte erudit' nos Ordin. prædict' obſervari volentes. Sciatis igitur quod nos de fidelitatibus & providis circumſpectionibus veſtris plurimum confidentes assignavimus vos ac tenore præſentium damus vobis quatuor, tribus vel duobus veſtrum plen' poteſtat' & auctoritat' ad omnia & ſingula Maneria, Meſſuagia ſive Tenementa, Terras, Prata Paſcua & Hereditamenta quocunq; dicti Defendantis accedend' eaque intrandi & ingrediendi ac Redditus, Exitus, & Proficua eorundem, necnon totum Statum perſonal. ipſius Defendantis in manus veſtras quatuor, trium vel duorum veſtrum capiend', levand', colligend', exigend', recipiend', & ſequeſtrand'. Et ideo vobis mandamus quod vos quatuor, tres vel duo veſtrum (ad certos dies & loca quos ad hoc provideritis) conveniatis & aſſembletis, ac ad omnia & ſingula Maneria, Meſſuagia, Terras, Tenementa & Hereditamenta dicti Defendantis accedatis eaque intretis & ingrediamini, ac Reddit' Exit' & Proficua eorundem, necnon totum Statum Personalem ipſius Defendantis in manus veſtras quatuor, trium vel duorum veſtrum capiat'is, levetis, colligatis, exigatis, recipiat'is & ſequeſtretis donec & quonſque præſat' Defend'

Another Sequeſtration till the Defendant ſhall answer and diſcharge his Contempts.

Of Writs of Subpoena ad Respondend.

Defend' Queremon' predict' directe & perfecte responderit, dictaq; Curia nostra aliter in contrar' inde specialiter ordinauerit. Teste Rege apud Westm.

J. T. Magist' Rot.

P. R. Ar. versus R. S. Mil.

An Injunction upon a foregoing Sequestration, reciting the same.

Injunction
upon a Se-
questration:

Georgius, &c. R. S. Militi ac omni alia Person' sive omnibus aliis Personis habent' clameum sive vendicant' aliquod Jus, Statum, Titulum, Interesse, Clameum vel Demand' quodcumque per vel subter te prefat' R. S. de in vel ad omnia & singula Maneria sive Tenementa Terras, Prata, Pascua & Hereditamenta quacunque, aut de in vel ad aliquod Statum Real. sive Personal. ad te predict' R. S. spectant. (or, if they are Lands claimed in the Plaintiff's Bill, and particulariz'd therein, thus) Necnon cuiusq; al' persone sive quibuscunque al' personis aliquod Jus, Statum Titulum, Clameum, Usus, Possessionem, Interesse, vel Demand' de vel in aliquibus illis Messuagis Terris, Tenementis & Hereditamentis situat. jacent' & existunt in E. &c. mentionat' & specificat' in quadam Queremon' P. R. Ar' Quer' coram nobis in Cancellaria nostra versus ipsum exhibuit aut de vel in aliqua inde parte vel parcella per vel subter te prefat' R. habent' Clam' vel vendicant' & eorum cuilibet Salutem. Cum predict' R. R. per 'quandam Queremon', &c. (setting forth, as before in the Sequestration, the Contempts of the Defendant) Quodque tu prefat' R. S. superinde pro defectu comparationis & responsionis ad Queremon' predict' in Contemptu & Contumaciatione sis, & ideo Breve nostrum de Sequestratione emanavit direct' (to the Commissioners named in the Sequestration) Commissionar' predicti B. P. R. dand' eis Potestatem sequestrand' omnem Statum tam Real. quam Personal. tui prefat' P. Defendantis sed prefat' Commissionar' cum eandem Sequestrationem exequi voluer. ad domum mansionalem tuam de W. venient' in eandem admitti non potuerunt velut ex certificatione liquet. Nos ad hoc considerationem habentes, volentesque Decretum & Mandat' dict' Cur' nostr. inviolabiliter observari; Tibi igitur prefat' R. S. ac vobis prefat' ceteris omnibus & singulis Personis supradictis & cuilibet vestrum (Subpoena trium mille Librarum

de

de Terris. Bonis & Catallis vestris ad opus nostrum levand') firmiter injungendo Pracipimus quod sine dilatione permittatis, & quilibet vestrum permittat dictos (the said Commissioners) Sequestratores & Agentes suos quatuor. tres vel duos eorum Maner', Messuag', &c. tua & domum mansionalem, Terr' & Præmissa prædict' intrare & Possession' eorundem accipere & Reddit', Exitus & Proficua eorundem & cujuslibet inde partis & parcel' in manus & possessiones suas accipere & recipere & easdem juxta tenorem Brevis de Sequestrat' prædict' sequestrare donec & quousque tu præfat' R. Queremon' prædict' P. directæ & perfectæ responderis, ac donec & quousq; Custagia & Dampna quæ prædict' P. in hac parte substituit eidem P. satisfeceris juxta directionem dict' Cur' Cancellar' nostr'. Et hoc sub Penâ prædict' nullatenus omittatis, nec aliquis vestrum omittat quovismodo. Teste meipso apud Westm', &c.

For other Commissions, Sequestrations and Injunctions, see hereafter in the Chapter touching the same.

And this last Precedent of an Injunction upon a Sequestration, being the utmost Process that the Court can issue for the Contempt of Non-appearance, I shall here close this Chapter of *Subpœna's ad respondend'* and the subsequent Process of *Contempt*, after I have added a few Words touching Contempts in general, viz.

Of Contempts in general.

Processes to the proper County.

1. All Process of Contempt shall be made into the County where the Party prosecuted is usually resident or inhabitant, unless he shall be at that Time occasionally in or about London; in which Case it may be made into such County where he is so occasionally resident. *Vide Ordin. Curie p. 14 and 137.*

2. And if any Person shall be taken upon Process otherwise, or any way irregularly issued, the Party so taken, first appearing unto, and satisfying the Process which had regularly issued against him, shall be discharged of his Contempt, and have his full Costs to be taxed of Course by the Six Clerks, not towards the Cause, for such undue or irregular Prosecution, from the Time the Error first grew, without Motion, or other Order, *Ibid. p. 137.*

Irregular Processes to pay Costs.

All Attachments on Process shall be discharged upon the Defendant's Payment or Tender to the Plain-

Attachments, &c. how discharged on Plaintiff's Costs.

Of Writs of Subpoena ad Respondend.

tiff's Clerk, and Refusal, of the ordinary Costs of the Court, and filing his Plea, Answer or Demurrer, as the Case regularly requires, without any Motion in the Court on that Behalf. *Ord. Chan.* 138.

With Costs.

4. And if after such Conformity and Payment of the Costs (or Tender and Refusal as aforesaid) any further Prosecution shall be had of the said Contempt, the Party prosecuted shall be discharged with his Costs, *Ibid.*

Interrogatories.

5. Where a Contempt is prosecuted against any Man, he shall not be put to move the Court, as was formerly used, either for Interrogatories to be exhibited, or for Reference of his Examinations, and for his Discharge being examined, But where any Person shall be brought in by Process, or shall appear *gratis* to be examined upon a Contempt, he shall give Notice of such his Appearance, to the Attorney or Clerk on the other Side.

Appearance.

Examination.

6. And if within eight Days after such Appearance and Notice given, Interrogatories shall not be exhibited whereon to examine him; or if being examined, no Reference shall be procured of his Examination, nor Commission taken out on the other Side, nor Witnesses examined in Court, to prove the Contempt within one Month after such Examination, then the Party so examined, shall be discharged of his Contempt, without further Motion; and may attend any one of the Masters of the Court for the taxing of his Costs; which the Master is to tax without further Order; and that Taxation being entred with the Register, the Party may proceed for the same Costs, as in other Cases of Costs taxed. *Ibid.* p. 141, 142.

Contempt not proved.

Party discharged, and Costs taxed.

Departure sans Leave.

7. If after Appearance and Interrogatories exhibited, as aforesaid, the Party appearing shall depart before he be examined (without Leave of the Court) he is upon Motion, and Certificate from the Register of the same; or of such his departing, and not being examined on the Interrogatories exhibited from the Examiner, to stand committed without further Day to be given unto him, and is not to be discharged from such his Contempt, until he hath been examined, and been cleared of his Contempt. *Ibid.* 138.

Commitment.

8. And

8. And if he shall upon his Examinations, or by Proofs be found in Contempt, and thereupon committed, he shall clear such his Contempt, and pay the Prosecutor his Costs before he be discharged of his Imprisonment. *Ibid.* 139. *Vide of Commitments postea.* Costs paid.

9. And though he be cleared of his said Contempt, yet he shall have no Costs in respect of his Disobedience, in not submitting to be examined without the Prosecutor's Trouble and Charges in moving the Court, as aforesaid. *Ibid.* No Costs, tho' clear'd of the Contempt.

10. But upon Examination or Proof of a Contempt referred to any of the Masters of the Court, to certify whether the Contempt be confessed or proved, or not; the Master in his Certificate thereof made to the Court, shall also assess and certify the Costs to either Party, as there shall be Cause, without any Motion or Order for that Purpose. See more of Contempts in *Ord. Chan.* pag. 19 140, 141, 142, 187, 206. Master's Certificate.

Vide postea touching Contempts for Breach of Orders, or grounded upon *Affidavits*, and of Commissions for examining Contempts, &c.

Hitherto of *Process*es, &c. before the Defendant's Appearance; we now proceed to shew the Method of the Defendant's appearing and answering the Plaintiff's Bill.

CHAP. IV.

Of the Defendant's Appearing and Answering the Plaintiff's Bill, and Dedimus Potestatem, and Answers thereupon.

THE Defendant's Appearance is either voluntary, or compulsory; *Voluntary*, when he comes in upon the Return of the *Subpœna ad respondend'*, and enters his Appearance in the Book kept for that Purpose in the Six Clerk's Office: Or *Compulsory* where he is taken and brought in upon an Attachment, Proclamation, Commission of Rebellion, or Serjeant at Arms; in which Cases he must enter his Appearance with Appearance voluntary, or compulsory.

with the Register, and also in the Six Clerk's Book, as aforesaid.

And *note*, in neither Case, the Defendant is not bound to appear till the Return of the Process, tho' he be serv'd with it ever so long before.

Time for
voluntary
Appearance.

And if his Appearance be voluntary, then if he lives within twenty Miles of *London*, he has four Days Time to appear after the Return of the *Subpœna*, excluding the Return-day: But if he lives above twenty Miles from *London*, then he has eight Days after the Return in like manner.

Served six or
seven Days
before the
Return.

But if he be served six or seven Days, or more, before the Return, then he shall have but two Days after it to appear. And if he be served but five Days before the Return, he shall have three Days after it; and if but four Days before, he shall have four Days after it. And in like Manner, if he be served but three, two, or one Day before, or even the very Morning of the Return, he has four Days after it, as aforesaid.

Note, This is meant when the Defendant lives within twenty Miles of *London*; but if he lives above twenty Miles from *London*, then if he be served either on the Morning of the Return, (*i. e.* before twelve a-Clock) or within eight Days before the Return, in each Case he hath eight Days from the Service to appear in. But if he be served eight Days or more before the Return, he has only two Days after it to appear in.

N. B. This is, in Strictness, the Rule of the Court: But usually a Defendant, when he lives above twenty Miles from *London*, has Leave given him on Motion, &c. to answer *per Dedimus*, and then he has longer Time. *viz.* commonly till the first Day of the following Term, or longer, on Cause shewn.

And though the *Subpœna* be returnable *immediate*, yet the Defendant, if he lives within twenty Miles, he has four Days to appear; and if above twenty Miles, eight Days, as aforesaid. But for such a *Subpœna*, *Affidavit* must be made, That the Defendant lives in Town, or within twenty Miles thereof.

Attachment,
&c.

And if the Defendant appears not within the Times before-mentioned, then on *Affidavit* that he was served, with

with Process, *us supra*, the Plaintiff may have an Attachment, and the following Process, as before is shewn, pag. 59, 60, 61.

Also, if a *Subpoena* returnable *immediate*, be served the last Day of the Term, before the Rising of the Court, the Defendant must appear and answer by that Day seven-night, (except he can shew good Cause for longer Time.) But *Quare*: For though he is bound to appear, yet no Attachment can be against him for not answering till the Term.

And if the *Subpoena* be returnable at a Day certain, although that Day be the last save one of the Term, yet the Defendant must appear and answer by that Day seven-night, i. e. in eight Days, except Cause shewn, as aforesaid. *Ibid.*

But if it be returnable the last Return of the Term, then the Defendant is at Liberty to appear by the first Return of the Term following, *ibid.* So that it is of more Advantage to the Plaintiff to make it returnable either *immediate*, or on a Day certain, than on a common Return-day.

And note, in Term-Time 'tis needless to have it returnable *immediate*; for it may be made returnable on a certain Day in Term; and if it be returnable in the Vacation, there must be a Petition and Motion for it.

And if the *Subpoena* be returnable so near the End of the Term, that there cannot be a Day given to answer, yet the Defendant must at his Peril answer that Day seven-night after the Day of his Appearance, although it be out of Term; for the Chancery is always open.

The usual way for the Defendant to enter his Appearance, is to retain some one of the sworn Clerks in the Six Clerks Office to appear for him, whose Fee is 3 s. 4 d. and he thereupon enters the Appearance in a Book called, *The Appearance-Book*, kept in the Office for that Purpose; which Book has the Day of the Month and Year at Top, and under each Day, Appearances are entred thus, viz.

A. B. *ad Sectam* C. D. & al. *compertus per* Petris, i. e. the Clerk's Name.

Return on a Day certain.

Return the last Return-Day.

In Term-Time.

In the Vacation.

Appearance, how entred.

H

When

Rules to answer.

When the Defendant has appeared, then the Plaintiff's Clerk in Court, may give the Defendant's Clerk on the Day after the (costs-day, (i. e. the second Day after the Return of the *Subpœna*) or on the Day after his Appearance, a Rule to answer by that Day Seven-night; which Rule being entred with the Register, if the Defendant do not then answer, or satisfie the Court by *Affidavit*, of some Cause why he cannot, and Motion thereupon for longer Time; or if the Defendant doth not, for the like Cause, procure a *Dedimus* to take his Answer in the Country, and enter the Causes thereof with the Register, then the Plaintiff may have an Attachment against the Defendant, for that he hath not answered by the Day limited by such a Rule.

Answer by Commission.

Attachment.

Costs-day.

No Day given to answer,

Attachment.

Answer not dilatory.

Causes of Delay allowed.

Where Sight of Goods, and Evidences is requisite.

Note, The next Day after the Return of the *Subpœna*, is Costs-Day.

But if no Day be given the Defendant to answer, then he hath Liberty to answer any Time during the Term, (except *Affidavit* be made by the Plaintiff, or some other for him, That the Defendant is in Town, or within ten Miles of it) and if he omits to answer within that Time, then an Attachment may be entred with the Register without Motion, viz. for that the Defendant appeared and departed without Answer, therefore an Attachment is granted.

Note, the Defendant in giving in his Answer, many Times makes much Delay; but in all Cases of Delay, he must upon Oath satisfie the Court of the Causes of such Delay, which may be in several Respects; as,

First, Where the Matter contained in the Bill is such to which he cannot give Answer, without Conference had with some other Persons named in the Bill, or to whom the Bill refers, or the Matter thereof concerns.

Secondly, Where the Bill chargeth the Defendant with having of Goods or Chattels of the Complainant's, and is to make Discovery what they are; in such Case, the Goods being in the Country, and he here, he may make Oath he cannot make perfect Answer to the Plaintiff's Bill, without Sight and Perusal of the Goods: So likewise where he cannot make di-

rect

rect Answer, without Sight of some Evidences or Writings which he hath in the Country, he may make Oath thereof; but in such Cases, the Place in the Country where those Parties live, Goods, Writings, or Evidences lie, must be above twenty Miles from *London*, for else he must answer within eight Days after his Appearance, unless farther Time be given him by Order.

Upon Oath made as aforesaid, then his Answer will be spared till the first Day of the next Term, may be of the Term following oftentimes.

There may likewise Oath be made by another Person, either by his Solicitor, Servant, or some Neighbour to the Defendant, that he is sick, or disabled for Travel without Danger of Life.

Upon such Oaths made, as aforesaid, if the Plaintiff refuse to allow of a *Dedimus Potestatem* on the Behalf of the Defendant, for the taking his Answer in the Country, the Court of Chancery, upon Motion or Petition will order it, and the Order that is so obtain'd, must be carefully entred in the Register's Office, and the *Affidavit* upon which the Order is grounded, must be filed in the *Affidavit-Office*.

Where the Defendant doth not appear, or that after he hath made his Appearance, he doth not answer within the Time limited him, nor by way of Excuse sheweth any the Reasons aforesaid, in such Case an Attachment is, as aforesaid, awarded against him, which Attachment must be entred into the House-Book of the Six Clerk's Office, and likewise in the Register-Book, expressing the Cause of the issuing of the said Attachment, as aforesaid.

After the Defendant has appeared, he must first take out an Office-Copy of the Plaintiff's Bill, before he can answer it; which Copy costs him about 12 *d.* per Sheet in the Six Clerk's Office, and with this Copy he ought to apply to Counsel, who will advise him either to answer or to plead, or demur to the Plaintiff's Bill: For in many Cases the Defendant may refuse to answer, but plead some Matter in Law, or demur to the Bill; which Plea or Demurrer being allowed, the Bill will be dismiss'd; but if over-ruled,

Distance from London.

Oath.

Dedimus Potestatem. Vide infra.

Attachment for want of Answer &c.

Answer, how taken and filed.

Plea or Demurrer.

Of the Defendant's Appearing,

he is then ordered by the Court to pay Costs, and to answer the Bill.

May be before Answer.

So that in many Cases it may be most proper to demur, or to shew some Cause by way of Plea, why the Defendant ought not to answer; and therefore in such Cases the Plea or Demurrer come in Course before the Answer: But in regard 'tis more frequent, and it seems more reasonable in a Court of Equity to give in a fair and direct Answer to the Bill, I shall here proceed to shew the Method of preparing and filing the Defendant's Answer, before I treat of Pleas and Demurrers, which I have reserved for a following Chapter.

Answer in Cause sworn before a Master, Or before Commissioners by Dedimus Potestatem: An ordinary Dedimus, or Commission to take an Answer.

An Answer in Chancery may be either taken here in Town, and sworn before a Master in Chancery; or if the Defendant lives above twenty Miles from London, it may be taken by Commissioners in the Country, impowered therunto by Vertue of a *Dedimus Potestatem*: The Form whereof follows, viz.

Georgius, &c. Dilectis nobis A. B. C. D. &c. Salutem. Cum W. B. Quer' quandam Petitionem sive Billam Anglicanam coram nobis in Canc' nostra vers. G. H. Defendentem nuper exhibuit. Quodq; eidem Defendenti per Breve nostrum nuper precepimus quod esset coram nobis in dicta Canc' nostra ad certum diem jam praterit' Petitioni pradiet' responsur. Sciatis quod nos de fidelitatibus Industri' & providi Circumspectionibus vestris in negotiis nostris agend' plurimum confidentes assignavimus vos, & vobis ac duobus aut pluribus vestrum plenam Potestatem & Autoritatem damus & committimus per Praesentes ad ipsum G. H. Defendentem de & super materia in Petitione sive Bill Anglican' pradiet' content' diligenter examinand' & Respons' suam super eandem recipiend' & in scripti in Pergameno redigend', ac ideo vobis mandamus quod ad cert' Diem & Locum, sive ad cert' Dies & Loca quos vel qua ad hoc provideritis, aut duo sive plur' vestrum providerint circa premissa intendatis aut duo sive plur' vestrum intendant. Ita quod praesat' Def. de & super materia in Petitione sive Billa pradiet' specificat' super sacrament' suum coram vobis aut duobus sive plur' vestrum per sacrosancta Dei Evangel' corporaliter praestand' diligenter examinatis, aut duo sive plur' vestrum per sacrosancta Dei Evangel' corporaliter praestand' diligenter examinatis, aut duo sive plur' vestrum

examinent, & quod Respons. suam superinde recipiatis & in scriptis in Pergameno redigatis, & cum ill' sic ceperitis eam nobis in Canc' nostra (tali Return) ubicunque tunc fuer' sub Sigillis vestris aut duor' sive plur' vestrum clausmittatis, aut duo sive plur' vestrum mittant, & hoc Breve. Proviso quod G. H. prædict' Def. (or W. B. prædict'. Quer.) habeat Premonitionem per spatium decum dierum de Die & Loco Executionis harum Literarum præsen' Teste, &c.

Clause of Notice.

This (since the Stat. for the Amendment of the Law) is the most regular Form of a *Dedimus* to take the Answer of a Defendant, and therefore the Clauses therein touching the Tenor of the Bill, are herein omitted, the Reason whercof, with other *Dedimus's* for Answers of Corporations, &c. as also special *Dedimus's* to answer, plead or demurr, *vide infra*. But the Precedent *supra* has a *Proviso* for ten Days Notice of executing the Commission to be given to the other Side. The Form of which Notice may be thus, *viz.*

Special Dedimus. *Vide infra.*

" Whereas we whose Names are subscribed, have
" received a Commission, issuing forth of the High
" Court of Chancery, to us and others directed, to
" take the Answers, (or Pleas or Demurrers) of G.
" H. and others, Defendants, to the Bill of Complaint
" of W. B. &c. Gent. Complainants; wherein we are
" required to give ten Days Notice to the said G. H.
" or W. B. &c. of executing the said Commission.
" Now in Pursuance thereof, we do hereby give No-
" tice to you the said, &c. That we intend to exe-
" cute the said Commission on Friday the 18th Day
" of, &c. at the House of, &c. at which Time and
" Place you with your Commissioners may be present,
" if you please. Given under our Hands this ---
" Day of, &c.

Notice to the Plaintiff or Defendant.

To Mr. G. H. &c.

A. B. E. F.
C. D. G. H. &c.

Georgius, &c. Dilectis, &c. Salutem. Cum W. B. per Guardian suum Quer' quandam Petitionem coram nobis in Canc' nostra tam vers. Alderm' & Burgens. Burgi & Villa de M. quam vers. G. H. J. K. &c. Defendentes nuper exhibuit, quodque eisdem Defendentibus per Breve nostrum nuper

A *Dedimus* to take the Answer of a Corporation, and also of other Defendants.

Of the Defendant's Appearing,

This Clause
is now to be
omitted.

præcepimus quod essent in dicta Canc. nostra ad cert. diem jam præterit. Petitioni præd. responsur. Cumq; præd Alderman. & Burgens. Burgi & ville præd. sunt unum Corpus corporat. & unanimo consensu sub Communi sigillo corporationis suæ præd. responder. debeant. Sciatis quod Nos de fidelitatibus & providis Circumspectionibus vestris plur. confidentes Dedimus vobis tribus vel duobus vestrum plen. Potest. & Authorit. Respons. prædict Aldermannor. & Burgensium Burgi & ville præd. eidem Petitioni fiend. (Cujus quidem Petitionis Tenor. vobis mittimus præsentibus interclus.) sub communi sigillo corporationis suæ præd. debite & respectively capiend. & recipiend. Necnon præd. Defend. G. H. &c. de & super materia Petitionis præd. diligenter examinand. & ideo vobis tribus vel duobus vestrum Mandamus quod ad certos dies & locos quos ad hoc provideritis circa præmissa intendatis. Ita quod præfat. Defend. &c. ac Responsonem præd. Alderm. & Burgens. in Scriptis in pergameno redact. sub communi sigill. Corporationis præd. fact. respectively ut dicitur recipiatis; Necnon præd. alios Defend. de & supra materia Petitionis præd. super sacramentum suum (fact. per ipsos prius coram vobis tribus vel duobus vestrum sacrosanctis Dei Evangeliiis) corporaliter præstand. diligenter Examinetis responsionesq; suas eidem Petitioni fiend. recipiatis & in scriptis in Pergameno redigatis & cum Responsones præd. Defendentium sic ut præfert. acceperitis eas nobis in Canc. &c.

And if the Dedimus Potestatem be to take the Answer of a Nobleman, then it is in this Form, viz.

Dedimus to
take a Noble-
man's An-
swer.

Georgius, &c. Dilectis nobis, &c. Cum W. B. & al. Querentes quandam Petition. coram nobis in Cur. Canc. nostra vers. pranobilem H. Dominum C. Defendent. nuper exhibuerunt, Sciatis quod nos de fidelitate & providis circumspectionibus vestris plurim. confidentes assignavimus vos ac tenore præsent. Damus vobis tribus vel duobus vestr. Potestat. & Authorit. ipsum Def. de & super materiam Petitionis præd. diligent. examinand. & ideo vobis tribus vel duobus vestrum Mandamus, quod ad certos Diem & Locum quos ad hoc provideritis ad præfat. Def. accedatis ac ipsum Def. de & super materiam petitionis præd. attestan. super honorem coram vobis tribus vel duobus vestrum adiunc vi-

sis per ipsum sacrosanctis Dei Evangeliiis Responsonemq; sam eidem Petitioni fiend. recipiatis in scriptis & in Pergameno redigatis, & cum ill' sic ceperitis eam nobis in dict. Cancel. nostra, &c.

And the like *mutat. mutand.* for a Noble Woman. Or Noble Woman.

And if the *Dedimus Potest.* be to take the Answer of an Impotent Defendant, thus, *viz.*

Anna, &c. as in the first Dedimus, to Petitioni præd. respons. ac idem G. adeo. impotens sui existit quod usq; Cur. Canc. nostre præd. ad Diem illum ad Responsonem suam eidem Petitioni fiend. absq; corporis sui periculo laborare non possit. Nos statum ejusdem G. in hac parte pie compatiētes & de fidelitate & providis Circumspectionibus vestris plurim. confideētes Assignavimus vos, &c. To take the Answer of an impotent Person.

And because many Times the Defendant is not prepared to put in his Plea or Demurrer, and that there may be Occasion to plead, or demur, or both, as well as to answer, he is forced to move the Court for a special *Dedimus* to answer, plead and demur. For in all Cases where you would have a special Commission to take an Answer, Plea, and Demurrer, the Court must be mov'd for it, tho' it is seldom denied on Reasons shewn. Special *Dedimus* to be on Motion.

A special *Dedimus* for a College to plead, answer and demurr, and the like for other Defendants,

Anna, &c. Cum W. B. Clericus Quer' quandam Petition. cor. nobis in Canc. nostra vers. Magistros Socios & Scholar. Collegii de P. in Universitat. Oxonie, & R. S. Ar' & F. M. Gen. Defend. nuper exhib. Quodq; eisdem Def. per breve nostrum nuper præcepimus quod essent coram nobis in dicta Canc. nostra ad cert. Diem jam præterit. petitioni præd. respons. sciatis tamen quod nos de fidelitatibus & providis Circumspectionibus vestris plur. confid. Damus vobis tribus vel duobus vestrum plenam potest. & Authoritat. juxta directionem dictæ Cur. nostre Respons. præfat. Magist. Socior. & Scholar. præd. aut placita sive Morationes suas eidem petitioni fiend. sub sigillo Collegii præd. capiend. & recipiend. necnon Respons. præd. R. S. & F. M. super Sacrum. suum tact. per ipsos prius coram vobis To plead, answer, and demur, for a College and others.

tribus vel duobus vestrum Sacrosanct. Dei Evangel. corporal. præstand. aut placita sive morat. suas super sacrament. sua aut absq; sacramentis suis præstand. eidem Petitioni fiend. & recipiend. & ipsos Defend. de & super materiam Petitionis præd. diligenter examinand. Et ideo vobis tribus vel duobus vestrum Mandamus quod ad certos dies & loca quæ ad hoc provideritis ad præsat. Defend. si commod. ad vos laborare non possint accedatis ac Responsiones placita sive morationes præd. Magistror. Socior. & Scholar. præd. sub. sigillo dicti Collegii capiat. & recipiat. & respons. placita sive morationes præd. R. S. & F. M. super sacramenta, aut absq; sacramentis suis præstand. capiat. & recipiat. & in scriptis in Pergameno redigatis, & cum sic feceritis tunc Respons. placita sive morationes prædictor. Magistror. Socior. & Scholar. sub. sigillo dicti Collegii confect. & Responsiones placita sive morationes dictor. R. S. & F. M. nobis in dict. Cancel. nostra (tali Return.) ubicunq; &c.

Why Dedimus's were granted.

These *Dedimus's* or Commissions, either to take an Answer, or an Answer, Plea, and Demurrer, were formerly granted upon Supposal of the Defendants Impotency or Inability to travel, by Reason of Sickness, Age, or Infirmary, or in Cases of Noblemen, Corporations or the like; and therefore anciently were not to be granted, but upon Affidavit made of Sickness, Impotency, &c. or other good Cause shewn. *Wells's Pref.* 33.

Now granted of Course.

But since the Business of the Court increased, it became a Thing of Course, and therefore the Clause of Impotency need not be inserted therein, only it must be *ad præsat. Def. si commod. ad vos laborare non possit Accedatis*---And if a Defendant live twenty Miles from London, he has a *Dedimus Potes.* of Course to take his Answer, *Vide Ord. in Chan.* 64.

Tenor of the Bill, why sent.

& Heretofore the Tenor of the Bill was inclosed in, or annex'd to the *Dedimus*, and the Commissions then usually ran thus, viz. *Madamus quod vos Tenore Petitionis quam vobis mittimus presentibus annex. vel inclus. ad certos dies & loca, quos ad hoc Provideritis, &c.* That so the Commissioners might examine the Defendants thereupon, and take their Answer there-
to.

And

And therefore the Plaintiff's Commissioners might Grew into an refuse to join in executing the Commission, except an Abuse. they might read (or at least hear read) the said Bill or Tenor thereof, (as also the Defendant's Answer) in the Defendant's Presence.-----This Course was in its first Institution good and useful, but in Process of Time, as the best Things receive Corruption, so this turn'd to a gross Abuse.

For Suits in Equity increasing, Commissioners of mean Quality, and often of no great Knowledge or Probity, were made Use of, and the Plaintiff's Commissioners being willing to have as little Trouble as might be for their Fees, the Reading of such Tenor of the Bill, or the Answer of the Defendant thereto, became altogether neglected. How neglected.

Hereupon the Defendant's Attornies or Solicitors, procured Copies of the Bill, and were willing to serve themselves and their Clients too, by drawing the Answer, and by drawing it as artful and advantageous as their own Wit or Skill, assisted by that of Counsel, could devise. The ill Consequence thereof.

So that at length, it came to pass, the Commissioners when they met had nothing to do but to ask the Defendant, If he had read, or had read his Answer now before them? And he answering in the Affirmative, then to swear him, *That so much thereof as concern'd his own Act or Deed, was true; And so much as concern'd the Act of any other he believ'd to be true;* and so the Business was dispatch'd in an Instant. Neglect in the Commissioners.

The Six Clerks in Chancery perceiving no Use was made of the Tenor of the Bill, set any of their Young Clerks to abridge the Bill, without examining what they did therein; and so at length this Tenor of the Bill, sent with the Commission, became a meer Ballad, for which, however, the Six Clerks charg'd 8 *d. per Sheet*, which, since Bills have been so excessively lengthened amounted, to a very round Sum for most Bills. Neglect in the Six Clerks.

This being observed in Parliament to be a great, and, as Matters stood, a needless piece of Expence, it was thought fit the Subjects should be eased thereof, and therefore by the Stat. 4 & 5 *Anna*, for Amendment The needless Expence thereof occasion'd the Stat. 4. & Anne. Ch. 16. Sect. 24.

Of the Defendant's Appearing,

ment of the Law, 'tis Enacted, That no Copy, Abstract, or Tenor of any Bill in Equity, do go with the *Dedimus* or Commission; But in lieu thereof, the sworn Clerks in Chancery shall take to their own Use the termly Fee of 3 s. 4 d. and also the whole Fee or Fees made by the said sworn Clerks for all small Writs. And so the Tenor of the Bill, and the Charges thereof ceased.

Some think, had the first Design, in sending the Tenor been made effectual, it might have saved much Time and Charge by shortning Suits, which are much protracted by evasive and insufficient Answers; and that this might have been effected by an Order, That the Tenor of the Bill should be regularly made and examin'd, and That a Counsel in the Country, not in the Cause, should always be join'd in the Commission and of the *Quorum*; And That the Defendant should have been examined before the Commissioners upon the Tenor, and the Answer perused and read to the Defendants in their Presence.

Court to be moved for special Commissions.

If you would have a special Commission to take an Answer, Plea, and Demurrer, the Court must be moved. And because many Times the Defendant is not prepared to put in his Plea or Demurrer, or that there may be Occasion to plead or demur, or both, as well as to answer, he is forced to move the Court accordingly for a *Dedimus* to answer, plead, and demur.

To plead or demur. Costs, &c. if otherwise.

And 'tis said, the Commissioners upon an ordinary *Dedimus* or Commission, have Power to return nothing but an Answer only; but if a Plea or Demurrer (only) be return'd, it will be filed as if it came in without Commission, but at the Defendant's Peril of paying 5 Marks Costs, &c.

No Commission to demur only.

For this Court will not grant a Commission to demur only, because the Defendant may do that under Counsel's Hand, without delivering the same in Person, and without Oath; and therefore he is to put the same in, in due Time; and he shall not be excused from so doing by a Commission, to the needless Charge, as well as Delay of the Complainant. *Vide* Ord. Chan. 117.

Demurrer rejected, &c.

And therefore if the Defendant shall pray a *Dedimus*, and thereby return a Demurrer only, or only such

such a Plea as shall afterwards be overruled, he shall pay Costs, *ut supra*, and the Demurrer shall be rejected; and tho' the Plea shall happen to be allow'd, yet the Defendant shall have no Costs in respect of the Plaintiff's needless Trouble and Charge, occasioned by such Commission. *Vide ibid.* Costs paid.

And Note, Were a Defendant made Oath, That he could not answer without the Sight of some Writings in the Country, and thereupon had a Commission to take his Answer, and he upon that Commission put in a Demurrer only, an Attachment was awarded against him. An Attachment awarded.

Yet if a Defendant having a Commission to answer, only tenders a Demurrer to the Commissioners, and refuses to answer upon Oath, they are to return such his Refusal, and the Reason thereof, together with the Demurrer, and leave the same to the Consideration of the Court. But Commissioners must return it.

" But by the Collection of Orders in Chancery, *Demurrer,*
" Page 117, 118, where the Defendant is served with *&c. on the*
" a *Subpœna ad respondendum*, and obtaineth a Com- Commission.
" mission to answer in the Country, he shall without
" more Words have the same Liberty thereby to
" answer, plead, and demur, as he had by the
" original Process, if he could have appeared in
" Person. And,

" Where the Defendant doth demur, or put in *Demurrer, or*
" any just Plea which he hath, to the Disability of the *a Plea in*
" Person of the Plaintiff, or to the Jurisdiction of the *Disability.*
" Court, under the Hand of learned Counsel, it will
" be received and filed, although the Defendant do
" not deliver the same in Person or by Commission.

" And if the Defendant do not put in his Demur- *Plea or De-*
" rer or Plea, into the Paper of Pleas and Demur- murret to be
" rers, in the Register's Office appointed for that pur- entred, &c.
" pose, within eight Days after the same is put into
" the Court, that so the said Demurrer may be argued
" before the Lord Chancellor, as it shall fall in
" Course; and where this is omitted to be done, the
" Plea and Demurrer is over-ruled of Course, and the
" Plaintiff may take forth a *Subpœna* against the De- *Subpœna for a*
" fendant, to enforce him to make a better Answer, *better An-*
" and an Order for Costs according to the Orders in *swer.*
" Chancery, Page 118. When

Of the Defendant's Appearing,

Commissioners, how appointed.

When a Defendant is minded to take out a *Dedimus*, Commissioners Names may be struck as is usual upon a *Commission to examine Witnesses* for which *vide Postea*. But the Defendant's Clerk usually does no more than call upon the Plaintiff's Clerk, for the Names of two Commissioners, and puts them into the Commission with two of his own or the Defendant's Nomination. This Course arose, when the Commissioners Examining the Defendant grew into Disuse as aforesaid, their Business now being only to see the Defendant swear his Answer as before is shewn; and so the striking these Commissioners, is now usually done by the Six Clerks of Course.

Their Names to be entred, &c.

And as in Commissions to examine Witnesses, to prove Contempts, and other special Commissions directed by the Court, so in a joint Commission to take an Answer, the Commissioners agreed upon are to be entred in a Book for that purpose kept by the Six Clerk on the other Side, (that has the Carrying of the Commission) and subscribed unto by each Six Clerk in the Cause, or in their Absence by their Deputies; so that no Alteration may be made in the Commissioners Names, but by Order.

And see Orders in *Chan. Page 56, 57*, That the under Clerks shall not agree upon Names in any other Manner.

Plaintiff refusing to join.

If the Plaintiff refuses to strike Names, and to join in Commission, the Court will upon a Motion to that purpose, order him to join in four Days, or some other short Time, and on Failure thereof, that the Defendant shall have a Commission *ex parte*.

A Commission *ex parte*.

On a Commissioner's dying, a New Commission.

If one of the Commissioners named dies, the Clerks must name two more anew, and one of them must be struck by the adverse Clerk, and the Court must be moved for a new Commission, *viz.* with that new Commissioner to be added to the others that are living.

Notice of executing it.

There must regularly be six Days Notice, exclusive of the Day of Executing the Commission given to the Plaintiff, or of the Time of executing it, to some Person named to that Purpose in the Label of the *Dedimus*, which generally is the Solicitor in the Country.

And

And therefore, in Strictness, if Notice be given on a *Sunday* to execute it on the *Saturday* after, it may be a good Notice; but by a peculiar Clause in the Commission, to be had on Motion of the other Side, 10 or 12 Days Notice of executing it, may thereby be ordered to be given. *Vide* the like Clause *ante*, 101.

A Clause of Notice therein.

If the Party who has the Carriage thereof, gives Notice of executing it, but does neither countermand the Notice in due Time (*viz.* 3 or 4 or more Days before, as the Distance of the Place, &c. may require) nor executes it at the Time, the Court on Motion, will order Costs to be tax'd for the other Party's Attendance.

Costs on a Neglect of Execution.

And if the Party who has the Carriage, refuse or neglect to execute it, the Court will grant a new one to the adverse Party, and give him the Carriage of it.

New Commission on Refusal, &c.

Notice being given by the Defendant of executing a Commission, the Plaintiff's Commissioners attended at the Day and Place from Nine a Clock till Twelve, and from One till Three, and the Defendant's Commissioners came not, and yet the Answer was sworn the same Day; and therefore the Plaintiff mov'd, that the Answer might be suppress'd; but the Court refus'd, saying, His Commissioners should have stayed till Six a-Clock.

Time of Attendance.

No second Commission is to be granted without special Order of the Court upon good Reason to induce the same, or upon the Plaintiff and Defendant's joint Consent.

Second Commission on Motion.

But if by the fault of him who has Carriage of the first Commission, the other is put to unnecessary Charges, the Court will order a Master, or tax him Costs, and upon Cause shewn, order the Party in Default to give Security to pay 'em before he have a second Commission; and (if he has the Carriage of the second Commission) to pay the Costs upon it also, if he again fails therein.

Security for Costs on a second Commission.

An Attachment, and the following Procefs of Contempt, (which had issued for not returning the Commission and Defendant's Answer) was discharged, paying the ordinary Fees; because one of the Plaintiff's Commissioners refused to join with one of the

To indifferent Commissioners.

De-

Of the Defendants Appearing,

Defendant's to take the Answer; and a new Commission was granted to indifferent Commissioners, named by the Defendant, (or Court.) *Vide Cary's Rep.* 113.

Dedimus lost.

And if by Misfortune the *Dedimus* be lost, this Court will grant a new one.

Who may be Commissioners.

Upon a Motion to suppress an Answer, because one of the Commissioners that took it, was an Attorney's Clerk under Age; the Court said, If he be old enough to take an Oath, he is old enough to receive an Answer.

But *Note*, This was since the examining the Party on the Tenor of the Bill was quite refused; so that the Court has not now that Regard to the Ability and Capacity of such Commissioners as formerly.

For whom a Commission may be.

As a *Dedimus* or Commission may be for the Purposes aforesaid, for a Commoner, so it may also be for a Peer or Peerefs, as before is shewn, or for a Corporation Spiritual or Temporal, or for a Corporation and other Persons Defendants. *Vide Precedents* hereof, *ante*. Page 101, 102, &c.

Conditinal, &c.

It may be also conditional, as if the Defendant be an Infant, a Lunatick, or Impotent as aforesaid, or it may be qualified and limited with divers others special Clauses, as a Clause of Notice, &c.

How returned.
In Person.

When any Commission executed is return'd, it must be brought into Court, i. e. delivered to the Six Clerk or his Deputy, by some of the Commissioners therein named; or else he that brings it must make Oath before a Master in Chancery; *That he receiv'd it from the Hands of some of the Commissioners, and that by his Procurement or Consent, or to his Knowledge, it has not since been opened or altered.*

When to be returned.

A *Dedimus* ought in Strictness to be returned by the Day after the first Costs Day of the Term next after the issuing thereof, except of Trinity Term, and then by the second Costs Day. *Vide* of Costs Days, *ante* p. 98. But in regard Country Attornies, &c. (by whom Commissions are sent) generally come pretty late to Town in Term, the Clerk on the other Side will stay some Time, or the Court will perhaps enlarge the Time on a Motion to that Purpose.

Time enlarged.
Not to be copied or opened.

And *Note*, No Commission to answer, &c. so executed as aforesaid, is to be copied, or even opened till it be duly return'd and delivered to the Six Clerk, out

out of whose Office it issued or to his Deputy; or left with a Master in Chancery, upon Oath made *ut supra*.

And if it be a Commission to examine Witnesses, Commission it is not to be copied or opened until an Order for to examine Publication be duly pass'd in the Cause. But of Com- Witnesses. missions to examine Witnesses, *vide post*.

If a Defendant after his Appearance stands out all Contempt af- Process of Contempt, and doth not answer, he will ter Appearance. be committed.

Touching *Answers* in general, these Rules are to be Rules touch- observ'd, *viz.* ing Answers.

1. An Answer must confess and avoid, or traverse and deny all the material Points charged in the Plain- Note these Rules. tiff's Bill. *West*, second Part, 194.

2. It must contain nothing scandalous or impertinent under the like Penalty as a Bill, *viz.* good Costs.

3. It must be under Counsel's Hand. Tho' heretofore when taken *per Dedimus* on the Tenor of the Bill it needed not, the Commissioners being then usually Barristers at Law.

4. It must be upon Oath, except in the Case of Peers of the Realm, who have sometimes answered upon Oath, and sometime upon Honour. *Vide infra*, and *Ord. Chanc.* 63.

5. To a Matter charg'd as the Defendant's own Fact, if laid within Seven Years before, the Answer ought to be without saying, *To his Remembrance* or *as he believes*, unless the Court upon Exceptions taken, shall find Cause to dispense with so positive an Answer.

6. And as to the Act of another, which Act he does not certainly know, he ought to say, *He has heard, and thinks, or believes it to be true*, or that he does not think, or believe, &c. and not to say only, *That he has heard*.

7. If the Defendant deny a Fact charg'd in the Bill, he must traverse it directly, and not answer it by Way of Negative pregnant; as if he be charg'd with the Receipt of a Sum of Money, he must traverse, *i. e.* deny that he hath receiv'd that Sum, or any

Of the Defendant's Appearing,

any Part thereof; or set forth what Part he hath received, and deny the rest. *Orders in Chan.* 121.

8. And if a Fact be laid to be done with divers Circumstances, he must not traverse or deny it literally as it is laid in the Bill, but must answer and traverse the Point of Substance positively and certainly. *ibid.* 122.

9. A Defendant is not obliged to answer to any Matter, the Confession whereof might subject him to any Forfeiture or Penalty at Law.

10. But Bills for Discovery of Evidences, Writings, &c. in pure Matters of *mean* and *sum*, are good, and ought to be answered.

11. A Counsellor, a Clerk in Court, or Solicitor, are not obliged to answer what they know of their Client's Cause, as they are such. *1 Chan. Cases*, 277.

12. Neither is a Referee, where it is agreed, That what passes between them upon the Reference, shall not be disclosed or made Use of on either Side. *ibid.*

Noble Men,
&c.

13. See in *Orders of Chan.* p. 63. an Order of the House of Lords in 1640, That the Nobility of this Kingdom, and Lords of the Upper House of Parliament, and the Widows and Dowagers of the Temporal Lords, shall answer upon Protestation of Honour only. And this is the present Usage.

Deeds not to
be set forth
in hac verba.

14. Ordinarily an Answer ought not to set forth Deeds *in hac verba*; and tho' the Bill prays they may be set forth, yet if the Defendant in his Answer, says, he is ready to let the Plaintiff have Copies of them, or if he do not say so, but sets forth only Part of them, it seems well, and the Court will order, That the Plaintiff have Liberty at his own Charge to take Copies of them without sending them to a Master; or will order, That the Defendant produce 'em on the Examination of Witness, &c.

Scandal, &c.

Note, After an Answer is reported scandalous or impertinent, the Court must be mov'd by the Defendant, that such Part of it may be expunged on his Payment of Costs; nor will the Court permit it to be expunged till the Costs are certified to be paid.

The

The Defendant may without Notice, move to amend his Answer in a small Matter; but if it be in a material Point, he must give Notice of the Motion for such Amendment to the Plaintiff's Clerk or Solicitor, and tho' it be in a Material Point, yet the Court often grants it, especially if Affidavit be made, That the Defendant was surpriz'd therein. *1 Chan. Caf. 29.*

'Tis said an Answer may not be amended after Issue join'd, yet it has been sometimes done. *3 Prax. Canc. 37.*

A Defendant having in two Answers, swore she had no further Demand than so much, does without Notice swear a third Answer, and therein sets up another Bond. The Court ordered the Bond to be brought before a Master, and that he should examine whether she were duly sworn to the said Answers. **A third Answer differs from the two former.**

An Answer is not to be reputed as such till filed, yet where it is in the Office, and shew'd the Plaintiff's Clerk, if it contains any Thing which gives an Answer to some Suggestion of the Plaintiff's, whereby he prays a Favour of the Court; he ought to take Notice of it. **Answer to be filed, &c.**

As where the Plaintiff prays a *Ne exeat Regnum* upon an Information, and his Belief that the Defendant is going beyond Sea. If the Defendant's Answer be in the Office as aforesaid, and he therein denies that he is about, or designs to go, the Plaintiff ought not to have the Writ; for by such Answer he has sufficient Means to be satisfied, that he needs it not. **How it relates before filed.**

And *Note*, an Answer is not to be filed till the Costs for a Contempt in not answering are paid; and 'tis said, so it is, tho' the Plaintiff has join'd in a Commission for answering. **Costs to be first paid.**

A Copy of an Answer swore, but unfild, was given to the Plaintiff, to enable him to defend his Injunction, on Notice that the Defendant would move to dissolve it, upon Matter contain'd in the Answer, was held sufficient; but not so, where the Copy of the Answer was given him before the Answer was sworn. **Copy of Answer swore, but not filed.**

Answer before Election of Law or Equity.

The Defendant must answer before he can move, That the Plaintiff may make his Election, whether he will proceed here or at Law.

Judgment at Law.

If in an Answer to a Bill to be reliev'd against an Action upon the Case at Law, the Defendant swears Money due, this Court will sometimes order a Judgment to be given in Debt with a Release of Errors, or the Injunction to be dissolved.

Penalty of a Bond.

And if the Defendant by Answer to a Bill to be relieved against the Penalty of a Bond, says, he does not insist upon the Penalty, but is ready to receive his Principal, Interest, and Costs, the Parties shall be forthwith sent to a Master to examine what is due, &c.

To redeem a Mortgage.

And in Answer to redeem a Mortgage, the Mortgagee ought to say in his Answer, That he is ready to receive his Money as the Court shall direct; for then the Court will not order him to receive it without a reasonable Notice; but if he says generally, he is ready to receive his Money, the Court will order it to be paid immediately.

Diversity.

Purchasers, &c.

In an Answer, a Purchaser for a valuable Consideration, need not set forth any Deeds or Writings, but those by and under which he more immediately claims.

Nor need a Purchaser without Notice, or any in the like Case, in his Answer or Plea, set out the Conveyances at large, nor the Sums or Dates, but only in general say, By good and sufficient Conveyances in the Law, (or such and such in particular) for a real and valuable Consideration in Money paid.

Prisoners.

Where a Prisoner has appeared to a Bill, he shall not be brought up to answer till the Time for answering be out.

Hab. Corp.

But where the Defendant who has appear'd is in Prison, and will not answer, an Attachment being entered against him, a *Habeas Corpus* may be moved for to bring him to the Bar, to shew Cause why he does not answer.

Diversity.

Note, When a Prisoner cometh in or appears upon a *Habeas Corpus*, if he be in Execution, he shall be remanded to the Prison from whence he came; but if not upon Execution, then he shall be sent to the Fleet.

and Answering the Plaintiff's Bill.

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If a Bill be exhibited against a Prisoner who will not answer after an Attachment is entred against him, a Motion must be made for a *Habeas Corpus* to bring him to the Bar, to shew Cause why he does not answer, and the Fees paid by the Plaintiff for the same are as follow, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>	
For Allowance of the <i>Habeas Corpus</i> ,	00	02	04	Fees paid by the Plaintiff.
To the Tipstaff for bringing him into Court,	00	06	08	
To the Deputy Marshal for his Fee,	00	03	04	
To the Six Clerk to present the Prisoner to the Court,	00	03	04	
The Warden of the <i>Fleet</i> claims for his Fee, tho' the Prisoner be brought from the <i>King's-Bench</i> Prison,	00	06	08	
And if he be brought up with his Causes then you must pay for transcribing the Causes, viz.				
For the first Cause,	00	04	00	
And for every Cause more, if more than one,	00	02	00	
And if he be turn'd over to the <i>Fleet</i> ,				
The Marshal's Fee for his Discharge, is	00	17	00	
And the Clerk of the Petty-Bag, for entring his Causes in the Petty-Bag,				
For the first Cause,	00	04	00	
And for every Cause more.	00	02	00	

When a Defendant has appear'd to the Bill, and afterwards stands out all Procefs of Contempt, the Court will take the Matter of the Bill *pro Confesso*, and decree it accordingly.

And so it is where he is in Custody upon any such Procefs of Contempt, and being brought into Court, and having the Bill read to him, he is required to answer, but obstinately refuses so to do. *Prax Can. 8.*

So if he be in Prison at the Suit of any other, and stands out all Procefs of Contempt, he shall be sent for by *Habeas Corpus*, and brought into Court, where if he refuses to answer, a Day shall be given him, and if he doth not then answer, the Bill shall be taken *pro Confesso*.

Of the Defendant's Appearing,

But the Defendant must have appeared, or been some Way in Court, else no Decree *pro Confesso* (or any other Decree) can be against him. *Chan. Rep.* 282.

Divers Defendants.

If there be many Defendants, and one or some have answered, and the rest not; in some Cases the Plaintiff may proceed to Hearing against that one alone, and afterwards against the rest.

Husband and Wife.

If the Husband and Wife have appeared, and he only answers, an Attachment may be issued against both when the Time of answering is out, unless there be an Order for him and his Wife to answer separately. For,

Wife alone.

Tho' the Wife is not ordinarily to answer without the Husband, yet in special Cases, the Court will upon Motion, order that she shall answer alone; without which Order, a sole Answer made by her will be suppress'd.

As where the Husband was out of the Kingdom, and could not be brought to answer a Breach of Trust in which the Wife was mostly concern'd, the Court ordered, That she should answer alone.

Answer of one, binding to the other.

Tho' the Defendant's Answer generally concludes only himself, but does not ordinarily affect another Defendant, yet where one Defendant answered, and the other refused, the Court said, He should be bound by the other's Answer, if upon it, the Cause were against them.

Plaintiff not found.

'Tis said, where a Plaintiff cannot be found nor heard of, the Court upon Affidavit and Motion, will order the Answer to stay till the Plaintiff's Clerk in Court, by Note in Writing, shews where he lives.

Insufficient Answer.

When the first Answer is reported insufficient, the Defendant, if he answer again without excepting to the Report, must answer all the Points as were before excepted to by the Plaintiff.

Costs.

Note, On the first Answer reported insufficient, the Defendant pays 40*s.* Costs; on the second insufficient Answer, 3*l.* and on the third insufficient Answer, 4*l.* and on the fourth insufficient Answer, he shall pay 6*l.* Costs, and be examined on Interrogatories to the Points reported insufficient, and shall be committed until he has perfectly answered the Interrogatories, and paid the Costs. *Vide Orders in Chan.* 124.

And

And the Plaintiff may upon Report of such insufficiencies, have one *Subpæna* for Costs, and another for a better Answer; but if the Answer be reported sufficient, the Plaintiff shall pay to the Defendant 40 s. Costs. *Subpæna for Costs, and better Answer.*

Upon a *Subpæna* for Costs, and to make a better Answer, the Costs are to be paid on the Service of the Writ, and the Defendant is to appear on that *Subpæna*, and to answer as on the first *Subpæna*; but on a Report of a second insufficient Answer, the Defendant is bound to answer in Eight Days without further Service; and if he does not answer in that Time, an Attachment issues as if he had been served. *Process on insufficient Answers.*

And so on Exceptions filed, to a Report of a third insufficient Answer, where the Report was held good, he is to Answer in like manner. *Exceptions to the Report.*

Note, The Plaintiff or Defendant is at Liberty to except to the Master's Report, and upon a Petition with a Certificate, that Exceptions are filed with the Register, and the 40 s. paid, all Proceedings for Want of a better Answer, and for the Costs, shall be stayed.

Where there are Cross Bills, the Defendant in the first Bill must answer, before he in the last shall be compell'd to put in his Answer. *Cross Bills.*

Nor by the Course of the Court, can the Plaintiff in the last Bill, have Process of Contempt against the other till Eight Days after his own Answer is in.

Note, no Cross Bill is to be put in after Publication.

If the Defendant's Appearance be Time enough within the Term, a Rule may be given to answer in Eight Days; within which Time if he fails, or does not shew some good Cause of Excuse, an Attachment may of Course be made out against him. *Time to answer.*

And *Note*, This Rule to answer may be given the Day after Costs Day. *Vide ante*, p. 98. and must be entered with the Register. And if he appears before, it may be given the Day after his Appearance. *Rule, &c. Costs-day.*

But if the Defendant appears in Time, and no Rule be given, he is at Liberty to answer any Time during the Term: *Contra* if in Contempt, for

then he must discharge such Contempt, before his Answer is to be received.

Attachment.

If a Defendant does not answer in Time, an Attachment issues of Course; but the same with the Cause thereof must be entred with the Register; as, That he appeared and departed without Answer, *or*, That he answered not by the Day prefixed; *or*, That he did not return the *Dedimus* at the Day, &c.

Entred.

Rule to answer.

Where a *Subpœna* is returnable so near the End of the Term that there cannot be a Day or Rule given to answer, the Defendant in such Case, must at his Peril answer by that Day Seven-Night after his Appearance, tho' out of Term.

Time enlarged.

Causes thereof.

But the Court on Motion will ordinarily grant Ten or Fourteen Days, or more, or perhaps to the Middle or End of the ensuing Term, to answer upon Cause shewn; as, That the Defendant cannot answer without Sight of Writings which are in the Country, or without Conference had with some Person named in the Bill, or some other whom the Matter thereof concerneth, or without Sight and Perusal of Goods, &c. above Twenty Miles from London. In such Case, if the Defendant be not in Contempt, he may have Time to answer till next Term.

Within 20 Miles of London.

Note, What is said above, is to be understood where the Defendant is within Twenty Miles of London; for if he be above Twenty Miles, he has a *Dedimus* of Course to take his Answer in the Country, as before is shewn.

Commitment.

If the Defendant stands out all Process of Contempt after an Appearance, and doth not answer, he will be committed.

Process staid.

Affidavit was made, That the Defendant was sick and weak, and so disordered in his Mind, that he was not able to answer: The Court on Motion, ordered all Process of Contempt to stay some reasonable Time, till a Master should go and see if he were capable of Answering or not.

Answer by Disclaimer.

Where the Defendant by his Answer disclaims all Right or Title to the Thing demanded of him by the Plaintiff's Bill, he shall be dismiss'd with seven Nobles Costs, *viz.* If the Bill was exhibited against him for Vexation only; but if it appears that the Plaintiff,

Plaintiff had some probable Cause of Fear that induc'd him to exhibit such Bill, the Defendant on his Disclaimer, shall neither pay nor have any Costs. See farther of Answers, Pleas, &c. in Chap. 8.

I shall now give you some Preeedents of Answers, Disclaimers, Exceptions to Answers, and further Answers thereupon.

An Answer to a Bill that charged the Defendant with setting up a false Will, and *Exceptions* to the said Answer, &c.

The Answer of S. B. Spinster, Defendant, to the Bill of Complaint of R. J. Complainant.

THIS Defendant saving and reserving to herself all and all Manner of Benfit and Advantage of Exception to the manifold Untruths, Incertainties, Insufficiencies, and Imperfections in the said Complainant's Bill of Complaint contain'd, for Answer thereunto, or unto so much thereof as this Defendant is advised, is any Ways material for her this Defendant to make Answer unto, she answereth and saith, That she this Defendant doth not know what personal Estate *G. H.* in the Complainant's said Bill of Complaint mentioned was at the Time of his Death possess'd of, but believes he did make his Will in Writing, and thereof *K. H.* his then Wife Executrix, to whom he also devised the Sum of 2000*l.* but without any Direction for her to dispose of the same among her Relations, and that he dyed on or about the Month of *December*, 1689. And this Defendant likewise believeth, That soon after his Death, the said *K. H.* prov'd the said Will, and took upon her the Execution thereof, and possess'd her self of so much of his personal Estate as she could discover, and come at, sufficient to pay all his just Debts and Legacies. But this Defendant doth not know what Improvement the said *K. H.* made of the Estate left by the said *G. H.* but believes she made no Improvement. And this Defendant further saith, That some Time after the Death of the said *G. H.* she the said *K. H.* being in Discourse with the Defendant about making her Will, she then told this Defendant, that

An Answer to a Bill brought for setting up a false Will.

she would make this Defendant her Executrix, and she the said K. H. at the same Time, and several Times before, expressing a very great Kindness and Affection for this Defendant, she the said K. H. having bred up this Defendant from a Child, and this Defendant having all along lived in the House with her, and look'd unto, and taken Care of her the said K. H. But this Defendant being at that Time ignorant of the Nature of an Executorship, and fearing she should come into Trouble thereby, desired the said K. H. not to make this Defendant Executrix, but to make some of her Relations Executors, for which the said K. then blamed this Defendant, saying, she had no nearer Relations, and that she design'd to take Care of, and do very well for this Defendant, and often used Words to that Effect; but this Defendant being informed, That the Complainant was some Way related to the said K. she this Defendant, did desire the said K. H. to send for the Complainant, and at this Defendant's Desire, the said K. H. did send to the Complainant to desire him to come to the said K. and the said Complainant thereupon came to the said K. but what particular Discourse passed between them this Defendant knows not, But this Defendant saith, That at the Time the said Complainant so came to the said K. he brought another Person with him, and this Defendant believes it may be true, that the said K. did then give some Instructions touching the making of her Will, but what such Instructions were this Defendant doth not know, nor doth this Defendant know, that the said K. then gave the Complainant an Account of what Money she had by her in the House, nor did she desire him to tell over the same to the Knowledge of this Defendant, but this Defendant believes the said K. did then give the Complainant on old Watch, and some Pieces of old Money, &c. And this Defendant also believes, that the said Complainant did at that Time go away, and about Nine a Clock at Night on the same Day returned again, and brought a Draught of a Will wherein he was named Executor, which being read over to the said K. she did not approve thereof, but said, There should be several Alterations made therein,

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T me.

in, and that she had forgotten some Persons she intended to give Legacies unto, and so the Draught of the said Will was left in the said Room never executed, but soon after the said K. burned it with her own Hands, and within ten Days after, she the said K. caused another Will to be made, and thereof constituted and appointed this Defendant sole Executrix, and thereby gave the Complainant a Legacy of 100 l. But the said K. having afterwards taken some Displeasure at the Complainant, and being willing to alter her Will, she the said K. about the eleventh Day of *October*, 1699, did cause another Will to be drawn, which she voluntarily made and executed, and published and declared to be her Last Will and Testament, in these Words, *viz.* (*here recite the Will*) (or thus) and *inter alia*, Gave to this Defendant by the Name of *S. B.* my now Servant, all and every my Messuages and Tenements in the Parish of, &c. for all such Term or Terms of Years as I have therein, together with all Leases, Deeds, and Writings relating thereto: And by the said Will, she the said K. gave to the now Complainant a Legacy of 10 l. in these Words. *Item*, I give to my Cousin *L. G.* 10 l. of like lawful Money, having intended a better Provision for him, had his Behaviour to me deserv'd it: And as to all the rest and Residue, &c. (*here insert the Clause of making the Defendant Executrix and Residuary Legatee*) as in and by the Probate of the said Last Will and Testament, under Seal of the Prerogative Court of *Canterbury* now in the Defendant's Custody, and to which, she, this Defendant, refers her self, doth and may appear. And this Defendant further saith, That some Time after the making of the said last mentioned Will, *viz.* on or about the twentieth Day of *August* last, she the said K. departed this Life; soon after whose Death, *viz.* on the twenty-third Day of the same Month, and not before, this Defendant took the usual Oath in Order to the proving of the said Will, but the same did not pass the Seal of the Office till the twenty-fifth Day of the same Month of *August*, as in and by the Probate of the same Will, under the Seal of the Prerogative Court of *Canterbury*, and the Entries thereof in the said Court, to which this Defendant,

for

for more Certainty refers her self, may more fully, and at large appear. And this Defendant saith, the Occasion of proving the said Will so soon after the said K's Death, was because she had by her Will directed one hundred Pounds to be expended on her Funeral, and this Defendant was advised she could not safely act therein till she had proved the said Will, and it was not out of any evil Design whatsoever, but only what she was advised by her Friends as expedient to be done, and there was no Occasion that she knows of entring any Caveat against the Probate of the said Will, &c. However a Caveat was entred by one Mr. J. H. a Relation of her Husband, who upon producing the said Will, and the Testimony there was of it, did withdraw the said Caveat; and this Defendant is advised, she was not obliged, nor had she any Reason to give Notice to the Complainant, or to any other Person, of her proving the said Will, and saith, That she having duly proved the said Will, she this Defendant, by Vertue thereof, is well entitled unto, and hath possessed her self of so much as she could of the personal Estate of the said K. and hath and intends fully to perform the said Will, and confesseth that there is Assets sufficient to pay and satisfy all the said K's just Debts, and to perform her said Will, and this Defendant is ready and willing to pay unto the Complainant the Legacy given to him by the said Will, and this Defendant hath already, of her own free Accord, given unto the Complainant and his Wife, Mourning, which they seemed to accept of very kindly from this Defendant, and they did not then pretend to question the Validity of the said K's Will. And this Defendant denieth, That the Draught of the Will which the Complainant prepared for the said K. to seal, was left with this Defendant, nor did this Defendant undertake to get the same executed by the said K. nor did this Defendant get and keep the Draught of the said Will, nor did this Defendant send for any of the Defendant's Relations to come and stay with this Defendant in the House of the said K. nor did they or this Defendant hinder the Complainant from seeing the said K. when he came to her House to see her. Nor doth this De-

Defendant remember that the Complainant came above twice to see her after he had left the aforesaid Draught, at one of which Times he demanded the Sum of 10*s.* for making the said Draught, which said Sum, and 5*s.* more for some Charges he pretended he had been at; the said K. sent to the Complainant, and saith, That altho' the said Complainant was a Relation of the said K's, yet he was a very remote one, being but Cousins thrice removed, and one the said K. had no Correspondence with, nor as this Defendant believes, had so much as seen for above twenty Years before he was brought to the said K. by this Defendant's Means, as aforesaid, and after she was better acquainted with him (which was by this Defendant's Means) she repented she had ever sent for him, but having paid him the Charges he had been at about getting the Draught of the said Will as aforesaid, she the said K. did burn the same, and pursued her former Intentions of making this Defendant her Executrix, which she did by a Will deliberately made and published above ten Months before her Death, as aforesaid, and the making this Defendant her Executrix, was no more than what she had long, and lately before declared her Intentions to be, she having not only bred up this Defendant from a Child, but this Defendant having been for many Years an Apprentice and a Journeywoman to the said K. and her Husband, and one for whom they both had a great Kindness, and who, as they have often declared, did help to get the Estate they had, and for that this Defendant had been very serviceable to the said K. both in her Sicknes and Health, she the said K. always declared a great Affection for this Defendant, and as this Defendant believes, would never have thought of making any other Executors, if this Defendant, through her own Simplicity, had not oppos'd the same as aforesaid, --- saith, That the said K. did of her own free Will reject the Complainant, and preferred this Defendant to be her Executrix, and tho' the Estate she is likely to get by the said Executorship will not amount to any thing near what is suggested in the Bill, yet whatever the same may be, she doth insist she is lawfully entitled thereto, and is not obliged

ged to give the Defendant any Account thereof. Denies she did cause a Will to be made by the Will which the Complainant left with the said K. and denies that the Will herein before set forth is a fraudulent Will, or was obtained by any undue, or unlawful Means, but avers, that the same was freely and voluntarily made and executed by the said K. at a Time when she was in good Health, and of a sound and disposing Mind and Memory, and that she very well knew what she did, having very often, both before and after the making thereof, declared to several Persons, that she would leave this Defendant her Executrix, or Words to that Effect, as this Defendant doubts not to prove. Denies that the said K. H. did, to her Knowledge or Belief, own the Complainant to be her nearest Relation; nor was he her only Relation, as the Bill suggests, he having an elder Brother still living, as this Defendant is informed and believes; nor was he Cousin-Germane to the said K. but as the said K. hath declared, and this Defendant believes, only a third Cousin, and very remote in Kindred. *And this Defendant doth deny all and all Manner of unlawful Combination or Confederacy to the Prejudice or Injury of the Complainant; and therefore this Defendant humbly hopes she shall not be obliged to make a Discovery of the personal Estate of the said K. this Defendant having hereby admitted Assets in her Hands sufficient to satisfy all the said K's. just Debts, with all Legacies and Funeral Expences; and hopes she shall not be obliged to make any further Answer to the Complainant's said Bill of Complaint. Without that, that there is any other Matter, Cause or Thing material or necessary for this Defendant to make Answer unto, and not herein or hereby before well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which Matters and Things herein before contained, this Defendant is ready to aver, maintain, and prove as this honourable Court shall award, and therefore prays to be hence dismissed with her Costs and Charges by her in this Behalf most wrongfully sustained.*

Words of
Course.

See Exceptions taken to this Answer, post, Chap. 6.

A Bill to cause one to shew his Writings, whereby he holds his Lands, &c.

HUumbly complaining *W. B.* sheweth, &c. That *whereas* about four Years last past one *T. L.* of, &c. upon a certain Judgment in a Plea of Debt, amounting to the Sum of, &c. or thereabouts, by him obtained in his Majesty's Court of Common Pleas, against one *G. L.* of *M.* in the County of, &c. sued forth his Majesty's Writ of *Fieri Facias*, directed to the Sheriff of the said County, for the levying of the said Debt on the Goods and Chattels of the said *G. L.* By Virtue of which Writ, the said Sheriff did, amongst other Things, take into his Hands one Lease for divers Years yet to come, made to the said *G. L.* by one *T. S.* of, &c. in the County of *D.* Esq; of three Parcels of Land, called or known by the Name or Names of, &c. with all and singular their Appurtenances, lying and being in the Parishes of, &c. in the said County of, &c. together with all and singular Woods, Underwoods, and Trees, growing or being in or upon the Premises, or any Part thereof, together also with the Reversion and Reversions of the Premises aforesaid, and of every Part and Parcel thereof, together with all Manner of Commons, Ways, Estovers, Profits, Commodities, Hereditaments and Appurtenances to the same Premises belonging or appertaining. And afterwards, that is to say, on the ---- Day of, &c. he the said Sheriff, by his Deed, bearing Date, &c. under his Hand and Seal, did in Consideration of, &c. to him paid towards the Satisfaction of the Debt and Judgment aforesaid, bargain, sell, assign, and set over the said Lease and Term of Years yet to come, of all and singular the said Premises, unto one *W. B.* of *London*, Gent. Which said *W. B.* not long after did in Consideration of, &c. by your Orator to him paid, bargain, sell, assign, and set over unto your Orator, all and singular the said Premises, and every Part thereof: Upon which Bargain, Sale and Assignment of the said Premises so made as aforesaid, your Orator was in very great Hopes, to have peaceably and quietly enured into the said Premises, and so to have held, occupied and enjoyed the same accordingly. *But now*
so

A Bile to discover Deeds, &c.

so it is, may it please your Lordship, That one T. R. of, &c. pretending to have a Lease for divers Years yet to come, of some Part of the said Lands, made unto him by the said G. L. long Time before any such Sale or Assignment made thereof to your Orator as aforesaid, hath and still doth keep your Orator out of the Possession of the said Lands and Premises; upon which Lease or Demise, he the said T. R. pretends a certain yearly Rent is reserved to the said G. L. his Executors or Assigns; which Rent (if any be) your Orator hath heard is, &c. by the Year, and which your Orator, by Reason of the lawful Conveyance to him made as aforesaid, ought both in Reason and good Conscience, to have and enjoy during such Term as the said T. R. shall hold and occupy the Land aforesaid, by Reason of the said Lease which he so pretendeth to have. But forasmuch as your Orator doth not certainly know whether the said T. R. has any such Lease, or (if he hath any such Lease) what Date the same beareth, nor what Term the said T. hath therein unexpired, nor what Rent is thereby reserved, nor what Covenants are therein contained; and also forasmuch as your Orator cannot by the strict Rules of Law enter into the Premises, nor knoweth how in due Form of Law, to commence any Action against the said T. R. either for the Recovery of the said Land, or the Rent aforesaid. And for that the said T. R. doth not only use and occupy the said Lands and Premises to his own Profit and Advantage, without yielding or paying any Rent therefore to your Orator, or to any other Person lawfully claiming the same, but doth also utterly refuse to shew his said Lease, whereby he claimeth to hold the said Lands aforesaid, either to your Orator, or to any other Person; and for that the said T. in Combination and Confederacy with, &c. (*as the usual Clause of Confederacy.*) All which Actings and Doings of the said T. &c. are contrary to right Equity and good Conscience, and tend to the manifest Wrong, Injury, and Oppression of your Orator. *In tender Consideration* whereof, and forasmuch as your Orator is remediless, &c. (*as usual*) and for that your Orator hath no ordinary Way, by the ordinary Course of the Common Law,

Law, to enforce the said *T. R.* to produce or shew to your Orator such Writings as he hath for the holding and occupying the Lands aforesaid, but is altogether destitute of the Means to have a Sight of the same, but by the Aid and Assistance of this honourable Court. *To the End* therefore that the said *T. R.* may be enforced upon his Oath to discover what Right he hath to the Premises, or any Part thereof, and what Rent or Rents he hath paid for the same, and to whom; and that he may also set forth in his Answer, upon Oath, a true Copy or true Copies of such Lease or other Writings *in hæc Verba*, whereby he claimeth the Premises aforesaid, or any Part thereof; And that the said *T.* may truly and directly answer upon Oath, all the Matters and Things herein before contained, as fully and perfectly as if the same had been here again repeated and interrogated, and may particularly set forth upon Oath, whether, &c. *May it therefore please your Lordship to grant, &c. Process prayed vers. T. R.*

The Answer of T. R. Defendant, to the Bill of Complaint of W. B. Gent. Complainant.

THE said Defendant now and at all Times here-
after, saving, &c. saith, That the said *G. L.* named in the Complainant's said Bill, was possess'd for divers Years yet to come, of the said Parcels of Land in the said Bill mentioned, and called or known by the Name of, &c. by Vertue of a Lease thereof made by the said *T. S. Esq;* in the said Bill also named, unto the said *G. L.* long before the supposed Extent specified in the said Bill of Complaint. And the said *G. L.* so being thereof possess'd long before the supposed Extent (if any such there were) had in such Manner as in the said Bill of Complaint is supposed, made a lawful Demise and Lease of Part of the said three Parcels of Land, containing fourteen Acres, or thereabouts, unto the said Defendant for divers Years yet to come; upon which Lease the said *G. L.* reserved a yearly Rent to be paid during the Continuation of the said Lease: By Force of which Lease the Defendant entred into the said fourteen Acres, Part of the said three Parcels of Land, and was, and yet is lawfully possess'd accordingly, and ever since

Answer to
the said Bill.


since hath, and yet doth enjoy the same by Vertue of the said Lease and Demise, and is thereby to have and enjoy the same during the Continuance of the said Leases, of which there are at this Time about sixty Years to come and unexpired; and saith, That the Complainant is a Person altogether unknown to this Defendant, being one he this Defendant never had any Dealings or Correspondence with, and therefore this Defendant cannot but wonder at this Suit commenced by the said Complainant against this Defendant touching the Premises. And this Defendant saith, That the said *G. L.* after the said Lease and Demise so made to the said Defendant of the said fourteen Acres of Land as aforesaid, and before the said supposed Extent, made a Grant and Assignment of the Interest and Term of the said *G. L.* as well of the fourteen Acres which the said Defendant hath and occupieth by Vertue of the said Lease for divers Years thereof yet to come and undetermined, as also of the Residue of the said three Parcels of Land mentioned in the said Bill of Complaint, unto *H. L.* Son of the said *G. L.* unto which Grant and Assignment the said Defendant was privy. And therefore this Defendant humbly conceives, and is advised, That he this Defendant is for the Payment of his Rent chargeable, and ought by the Law to pay the Rent so reserved unto the said *H. L.* and not to the said Complainant, which said *H.* this Defendant doth verily think is the lawful Landlord during the said Term of Years yet to come, and not the said Complainant, who is altogether a Stranger to this Defendant; and saith, That the said Complainant never at any Time heretofore demanded any Rent for the said Part of the Lands that this Defendant hath, and occupieth by Vertue of the said Lease for Years: And also saith, That he is sued by the said *W. B.* in the said Bill of Complaint named in his Majesty's Court of *King's-Bench*, in an Action of Debt brought by him against the said Defendant; and therefore the said Defendant is somewhat surpriz'd at this Suit brought against him by the said Complainant touching the Premises, whereby this Defendant is wrongfully vexed, and sued without any just Cause: *Without that* that there is any just Extent made of the said

Traverse.

said three Parcels of Land called, &c. or that after the same Extent there was any such Bargain and Sale made by the Sheriff of the said Term and Lease for Years to the said *W. B.* as in the said Bill is set forth, or that the said *W. B.* bargained or sold the Premises to the Complainant, or that the said Complainant ought to have and enjoy the said Premises to the Knowledge of this Defendant: And without that that there is any other Matter, Cause, &c. (*as before*)

Traverse of the Extent, and Bargain and Sale to the Complainant, &c.

It will be needless to multiply Precedents of Answers, seeing the principal Directions in drawing them must be taken from the particular Facts charged in the Bill: And therefore in drawing your Answer, such Regard must be had thereto, that every particular Fact charged, ought to be answered in this Manner, *viz.* either directly confessed, or specially avoided, by shewing Cause why you ought not to answer it; or positively and particularly travers'd, *i. e.* denied, and not by way of Negative Pregnant. *Vide ante.*

 Directions for drawing Answers.

I shall therefore add only two Precedents more to those foregoing, *viz.* 1st. An Answer and Plea, and also a special Disclaimer, ; And 2^{dly}, A general Disclaimer, and then conclude this Chapter, with some few Notes or Remarks thereupon,

The Answer, Plea and Disclaimer of G. H. to the Bill of W. B. and others, Complainants.

THE Defendant saving to himself all and all Manner of Benefit and Advantage of Exception to the manifold Imperfections, &c. of the Complainant's said Bill of Complaint, and the Matters therein contained, by way of Answer thereunto, or, &c. he saith, That it may be true that *B. G.* in the Bill named, did lend such Sum of Money to *F. R.* in the Bill also named, and for securing the Repayment thereof, had such Deed by way of Mortgage made and granted to him, as in the Bill is set forth; and that the Complainants are well entitled to the Benefit thereof. But this Defendant of his own Knowledge knoweth not, nor ever did know of such Mortgage made by the said *F. R.* nor was in any wise acquainted with the Dealings or Transactions between the

An Answer, a Plea, and a special Disclaimer.

Plea.

said *F. R.* and the said *B. G.* and denieth all and all Manner of Combinations and Confederacy with the said *F. R.* in his Life-time, or with the said *J. R.* and *W. R.* his Brothers, or with any other Person or Persons whatsoever. And as to the Residue of the said Bill of Complaint, this Defendant not confessing or acknowledging the same, or any Part thereof to be true in such Manner and Form as the same are therein and thereby set forth and alledged. As to one Messuage or Tenement in the said Bill mentioned, situate, lying and being in *R.* with a Garden, &c. thereunto belonging, mentioned to be in the Tenure or Occupation of *H.* or his Assigns: And also as to one other Messuage or Tenement in the Bill mentioned to be lying and being in *N.* with a Yard, &c. thereto belonging, and in the Tenure or Occupation of *W. B.* his Assignee or Assignees. For Plea to so much of the said Bill he saith, That he this Defendant is a Purchaser of the said two Messuages, with the Appurtenances and Premisses, for a valuable Consideration in Money, really and *bonâ fide* paid to the said *F. R.* in his Life-time, without Notice of the Complainant's pretended Title in the Bill mentioned; and that the said *F. R.* hath by good and sufficient Conveyances in Law, as this Defendant is advised, conveyed the same to this Defendant and his Heirs absolutely, and without any Manner of Condition, Proviso, or Power of Redemption whatsoever. All which Matters and Things he this Defendant is ready to aver and prove as this honourable Court shall award, and humbly pleadeth the same in Bar to so much of the Complainant's Bill of Complaint, as this Defendant hath not herein before already answered, and humbly prayeth the Judgment of this Court, Whether this Defendant ought to set forth the Dates and Contents of his Deeds of Purchase, or the Effect thereof, whereby to enable the Complainants to inspect this Defendant's Title to the said purchased Premisses. And as to all the rest of the Messuages, Lands and Tenements in the Complainant's said Bill of Complaint mentioned, other than what he this Defendant hath pleaded unto, as aforesaid, he this Defendant disclaimeth all Right or Title hereunto, and knoweth nothing

Disclaimer.

thing thereof, and denies all Combination, &c. in the said Bill of Complaint contained, material or effectual for this Defendant to make Answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which Matters, &c.

Observe in the foregoing Precedent, there is contained, 1st. An Answer to Part of the Matters in the Bill charged. 2^{dly}, A Plea to other Matters therein, viz. That as to the two Tenements he is a Purchaser for a valuable Consideration. 3^{dly}, A Disclaimer as to the Residue of the Lands, &c. in the Bill mentioned; so that the Rules touching Disclaimers in general, cannot be applied to such a special or particular Answer, by way of Answer, Plea and Disclaimer.

Rules touching Disclaimers not applicable to that *supra*.

The several Answers and Disclaimers of P. R. one of the Defendants to the Bill of Complaint of R. G. Gent. Complainant.

THIS Defendant now and at all Times, &c. (as in other Answers) saith, That he this Defendant on Behalf of T. D. one of the other Defendants in the Bill named, did about fourteen Years ago, contract and agree with W. B. in the Bill named, for the Purchase of a Messuage or Tenement, and Garden, with Appurtenances in W. now in Question, and in Possession of the Defendant T. B. which said Messuage, &c. at that Time had been in Possession and Seizin of the said W. B. and M. his Wife, in the Bill named, or one of them, for above twenty Years before, for the Purchase whereof, this Defendant, on Behalf of the said T. D. agreed to give, and accordingly did give and pay to the said W. B. the Sum of 153 *l*. which was the full and real Value thereof; and in Consideration thereof the said W. B. and M. by Deed indented, and by a Fine with Proclamations by them levied in her Majesty's Court of Common Pleas at Westminster, in Michaelmas Term, which was in the sixth Year of the Reign of his late Majesty King William the Third, did convey unto the said T. D. and his Heirs, the said Messuage or Tenement, and Garden, with the Appur-

A general Answer and Disclaimer.

Of Disclaimers.

purtenances, by the Name of one Messuage, and one Garden, with the Appurtenances in *W.* by Vertue of which Fine and Deed so made and levied to the said *T. D.* as aforesaid, he the said *T. D.* as this Defendant hath heard, and believes, entred upon, and became seised of the said Messuage or Tenement, and Garden, with the Appurtenances, and continued so seised thereof without any Entry or Claim made by the Complainant, or any other Person or Persons, until the 16th Day of *May*, in the Year of our Lord 1701, when the said *T. D.* as this Defendant hath heard and believes, by good Conveyance in the Law, and in Consideration of the Sum of 150*l.* to him really and *bonâ fide* paid, sold and conveyed the said Messuage or Tenement and Garden, with the Appurtenances, to the said Defendant *T. L.* and his Heirs, who thereupon entred upon, and was, and yet is seised and possessed of the same, and saith, That he doth not know that the said *P. H.* in the Bill named, was ever seised of the said Premises, or any Part thereof, nor ever knew, or saw, or heard of any Settlement or Conveyance made by the said *P. H.* of the same Premises, or of any Part thereof; and saith, That he this Defendant was advised, and believes, the said *W. B.* and *M.* his Wife, had good Right and Title to sell the Inheritance of the said Premises so purchased by the said *T. D.* as aforesaid, and this Defendant never had any Notice of any Right or Title the Complainant, or any other had, or might or could claim of, in or to the same, or to any Part thereof, before the filing of the said Complainant's Bill. And this Defendant saith, That he this Defendant never had, nor claimed to have, nor doth this Defendant claim any Right, Title, or Interest of, in or to any of the Premises in Question, or of, in or to any Part or Parcel thereof: And this Defendant doth now disclaim all Right and Title of, in, or to the same, or of, in or to any other of the Premises in Question, or any Part thereof, with their Appurtenances. And this Defendant doth deny all and all Manner of Combination and Confe-deracy in the Bill charged, without that that any other Matter, Cause, or Thing whatsoever, material or effectual in the Law for him this Defendant to make

Answer

Answer unto, and not herein and hereby before well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which Matters and Things this Defendant is ready to aver, &c. *ut ante*.

And as to Disclaimers in general, these Things may be observed.

A *Disclaimer* is where the Defendant by his Answer *Disclaimer* upon Oath denies he hath, or claims any Right or *defin'd*. Title to the Thing demanded by the Plaintiff's Bill, and disclaims, *i. e.* renounces all Claim or Pretence of Title thereto

And in such Case, if it appear that the Plaintiff's Bill was exhibited against the Defendant only for Vexation, the Defendant on such his *Disclaimer* shall be dismiss'd with seven Nobles Cost against the Plaintiff. *If the Bill be vexatious, the Defendant to have Costs.*

But if the Plaintiff had any probable Cause or Reason for exhibiting his Bill against such Defendant, he may, if he please, by Motion or Petition, pray a Decree against the Defendant, and all claiming under him, since the Time of the Bill exhibited, which is commonly granted without Costs on either Side. *Contra, if on probable Cause.*

If one be named Defendant in a Bill (among other material Defendants) who no ways pretends any Right to the Matters in Question, and he thereupon disclaims, he may after such *Disclaimer*, upon a Motion to that Purpose, be used as a Witness in the Cause: For it shall be presumed his Name was inserted in the Bill, without other Cause than only to take away his Testimony from the other Defendants. *One disclaiming may be a Witness.*

And *Note*, where the Defendant disclaims, *i. e.* generally to all the Matters in the Bill) the Plaintiff is not to reply; if he does, and serves the Defendant with a *Subpoena* to rejoin, the Defendant may have Costs against him for the Vexation. *No Replication on a Disclaimer, if general.*

But if the *Disclaimer* be only to a Part of the Matters in Question, but as to the other Part, there is a Plea and Answer, as in the Precedent *supra*, in such Case there may be a Replication to that Part that contains the Plea and Answer, and a Demurrer to the Residue. *Contra, if special.*

C H A P. VI.

Of Exceptions to Answers, and putting in better Answers, and Hearings upon the Bill and Answer.

Exceptions defined.

BY *Exceptions* are commonly understood the Allegations of a Party in Writing, suggesting, that some Pleading or Proceedings in a Cause is insufficient, mistaken, or irregular in certain Points in the said *Exceptions* particularly express'd.

1. To Answers.

And such *Exceptions* are commonly either *Exceptions* to Answers, or *Exceptions* to a Master's Report; of these latter, *vide* the Chapter of *References* and *Reports*, *postea*.

2. To a Master's Report.

As to *Exceptions* to *Witnesses* or *Interrogatories*, they are of another Kind.

Causes of Exceptions to Answers.
Insufficiency.

If an Answer be insufficient in one or more Points, the Complainant may except thereto, and enforce the Defendant to put in a further and better Answer.

These *Exceptions* must shew some particular Point or Points wherein such Answer is insufficient, or defective: For if the Insufficiency be surmised only in general, the Court will not refer it to be examined.

Answer good to a common Intent.

And if the Answer be good to a common Intent, the Plaintiff must reply and prove the Matter of his Bill to be true, if he can, and not insist upon the Insufficiency of the Answer.

Not so of private Acts.

Note, This Rule must be intended of Things publicly done, whereof there may be a general Cognizance: For of Matters done by the Defendant privately, or resting in his Knowledge only, he ought to answer particularly and certainly.

No Exceptions after Replication.

No *Exceptions* may ordinarily be taken to an Answer after a *Replication* put in; for by the *Replication* the Answer is admitted sufficient; yet in some Cases the *Replication* has been ordered to be taken off the File, and *Exceptions* permitted to be put in.

Time to except to an Answer.

If the Answer be filed in Term, the Plaintiff must the same Term, or within eight Days after, deliver
Excep-

Exceptions in Writing to the Counsel, whose Hand is to the Answer, or to the Defendant's Clerk in Court. *Vide Ord. Chan. 123.*

But if the Answer be filed in the Vacation, the Plaintiff hath Time till eight Days after the beginning of the next Term to put in Exceptions. *Ibid.*

And in neither Case they cannot be put in afterward, without a Motion or Consent on the other Side to receive them.

And if the Defendant do within eight Days after such Delivery, satisfy the Plaintiff of the Invalidity of his Exceptions, or do amend his Answer in the same Time, or do agree with the Plaintiff or his Counsel, or Solicitor to amend it accordingly, and pay 20 s. Costs, the Plaintiff shall go on to reply. *Ord. Chan. 123.*

Invalid Exceptions. Answers amended, 20s. Costs.

But if the Defendant fail to do the same, or puts in a second or other insufficient Answer, the Plaintiff may on Motion get such first, or other insufficient Answer referred to a Master for such insufficiency. *Ord. Chan. 124.*

Answer referred, &c.

And if the Answer be reported insufficient, and so ruled, the Defendant shall pay Costs, and make a further and better Answer. But if it be reported good, the Plaintiff shall pay the Defendant 40 s. Costs, and the Answer shall stand. *Ibid.*

Master's Report, Costs, &c.

He that excepts to an Answer, is tied to no certain Time to get it referred, unless a special Order be for that Purpose obtained; or with Respect to his Injunction, lest it be dissolved for his affected Delay. *Ibid.*

Time to refer Exceptions.

The Plaintiff cannot refer Exceptions to a first Answer, till eight Days after they are filed; but upon a second Answer reported insufficient, they may be referred immediately. *Ord. in Chanc. 124.*

If the first Answer be ruled insufficient, the Defendant shall pay 40 s. Costs, if it was put in in Person; and 50 s. Costs, if it was put in by Commission. If a second Answer be reported insufficient in any of the Points formerly certified insufficient, the Defendant shall pay 3 l. Costs; and upon a third Answer reported insufficient, he shall pay 4 l. Costs.

What Costs on insufficient Answers.

4th Insufficient Answer
5 l. Costs, and be examined and committed.
A Plea and three Answers insufficient.

Subpœna for Costs, and a better Answer.

Commission for a second Answer, in what Cases,

Exceptions to Reports of Answers.

5 l. to be deposited, if to a general Report.

1. What, in Case of a Report to an Answer.

And upon a fourth insufficient Answer, he shall pay 5 l. Costs, and be examined upon Interrogatories to the Points reported, and shall be committed till he has perfectly answered those Interrogatories, and paid the Costs.

A Defendant first put in an insufficient Plea, it being over-ruled, and after that put in three insufficient Answers; yet the Court did not think it fit to commit him, as they would have done, had he put in four insufficient Answers. 1 *Chan. Cases* 179.

If an Answer is reported insufficient, the Complainant may at his Election, have one *Subpœna* for Costs, and another to make a better Answer; or he may have one *Subpœna* for both.

No new Commission shall be awarded for taking a second Answer, till the Costs of the first insufficient Answer are paid; nor then but by Order on *Affidavit* of the Parties Inability to travel, or other good Matter to satisfy the Court touching the Delay, or by Assent of the Plaintiff or his Clerk. *Ord. Chan.* 124.

Exceptions to an Answer, are commonly on Motion referred to a Master to examine, and thereupon to report his Opinion to the Court, whose Certificate is conclusive, unless either Party take Exceptions to it, which he may do, and is often done, to the great Delay and Expence of Suitors.

The Party excepting to a Master's Report, must deposit 5 l. with the Register, which, if the Exceptions are over-ruled, must be paid to the other Party; but if they are allowed, then back again to him that deposited it. *Ord. Chan.* 175, 209.

And if either Party except to a Master's Report touching the Sufficiency of an Answer, or other Matter, he shall pay 20 s. for every Exception, or distinct Branch of an Exception, which shall on arguing be over-ruled or declared frivolous and impertinent, and for such as shall be waived and not opened, 10 s. And these Sums shall be paid over and above the 5 l. deposited, if the Report be affirmed; or out of the 5 l. tho' the Report be altered. *Ord. Chan.* 175, 210, 235.

Yet

Yet where the Exceptions or any of them are found true and allowed, the other Party ordinarily pays 5 *l.* Costs; but it is in the Discretion of the Court to order more, or that each shall bear their own Costs. 5 *l.* Costs on Exceptions allowed.

And if they be found against a Defendant, upon an Answer, he must pay the said Costs and put in a better Answer. And a better Answer ordered.

But if the said Exceptions be upon another Matter, the Court determines as it sees Cause upon hearing them argued; or sends the Party back to the Master to review his Report. 2. How in other Cases.

Note. After an Answer was reported insufficient, and the Defendant appeared upon a new *Subpoena*, before any Attachment against him was sealed, yet the Court would not suffer him to except to the Report, altho' he had paid down the Sum appointed to be deposited upon excepting to a Master's Report.

Note.

Exceptions to Reports touching the Sufficiency or Insufficiency of Answers are not to be filed with the Register, unless Notice be given thereof to the Clerk on the other Side. *Ord. Chan.* 197. And the Practice now is not to file 'em with the Register, but to deliver 'em to the Clerk on the other Side. Exceptions to Reports touching Answers not to be filed.

See further touching Exceptions to Answers in *Orders of Chanc.* pag. 123, 124, 175, 179, 209, 235.

Precedents of Exceptions to Answers, and further Answers put in thereupon, viz.

Inter *T. D. Quer' & P. H. & al. Defendantes.*

In Chanc.

Exceptions taken and filed in this Court by the said Complainant to the Insufficiency and Imperfections of the Answer of the said Defendant P. H. put in to the said Complainant's Bill of Complaint.

THE Scope of the Plaintiff's Bill is to set aside a fraudulent Will set up by the said *P. H.* the Defendant, and to have a particular Account of the several Estates of *J. H.* and *K. H.* his Wife deceased, the Complainant being entitled to the same as the nearest Relation of the whole Blood, and Heir at Law to the said *K. H.* Bill.

To

Answer.

To which the said Defendant hath put in an imperfect, evasive, and insufficient Answer, not giving any particular Account of either of the Estates of the said *J. H.* and *K. H.* deceased, as is required by the Complainant's Bill: but insists upon a pretended Title to the same by Vertue of a fraudulent Will, pretended to be made by the said *K. H.* in her Life-time; which Will, if any such there be, the Plaintiff avers, and is ready to maintain and prove that the same was surreptitiously obtained, illegally executed, and unduly proved, with an Intent to defraud the said Complainant of the said *K. H.*'s Estate: For which Reason the Plaintiff excepts against the said Defendant's Answer as insufficient in the several Points following, *viz.*

1st. Exception.

And, *first*, the Plaintiff excepts against the said Answer as insufficient, for that the said Defendant by her Answer pretends her self to be a Relation of the said *K. H.* her Mistress, but doth not set forth her Pedigree, nor make out how-near of Blood, or related she was to the said *K. H.* all which she ought to have done.

2d. Exception.

The Plaintiff likewise excepts against the said Defendant's Answer as insufficient, for that she the said Defendant doth not therein set forth, Whether the said *K. H.* did not make her last Will and Testament in Writing, and the Plaintiff Executor thereof; and Whether she did not at the same Time, as a Token of her Kindness, give to the Plaintiff her Husband's Watch, to which the Defendant makes no Answer, but believes the said *K. H.* might give the Plaintiff an old Watch worth about 15 s. but doth not set forth upon what Account she gave the Plaintiff the same, nor whether the Watch so given to the Plaintiff, was the Watch of the Husband of the said *K. H.* all which she ought to have done, the same being required by the Plaintiff's Bill.

3d. Exception.

The Plaintiff also excepts against the said Defendant's Answer as insufficient, for that she the said Defendant doth not therein set forth how she procured and obtained the said fraudulent Will to be executed by the said *K. H.* and who were the Advisers therein; all which she ought to have done, it being required by the Plaintiff's Bill.

The

The Plaintiff also excepts against the Defendant's 4th Exception. Answer as insufficient for that the said Defendant doth not therein set forth, what Gold, Silver, Plate, Rings, Jewels, Bills, Bonds, Leases, Mortgages, Judgments, Extents, Household-Goods and Utensils of Household-stuff the said *K. H.* died possessed of, with the true Values of the same, and annex a Schedule of the Particulars thereof to her Answer, which she ought to have done, the same being required by the Plaintiff's Bill.

For all which Reasons the Plaintiff excepts against the said Defendant's Answer as imperfect, evasive and insufficient in the Particulars aforesaid; and therefore prays that the said Defendant may amend her Answer as to the same, and give in a full, perfect and sufficient Answer to the Complainant's said Bill of Complaint.

Exceptions taken to the Insufficiency, &c. of the Answer of W. B. Defendant, to the Bill of Complaint of A. J. Widow, Complainant. Another Form of Exceptions to an Answer. Bill.

THE End of the Bill is to have a Discovery of the whole Estate that *J. S.* late of *D.* in the County of *S.* Gen. deceas'd, died possess'd of, with the Particulars, and true Values thereof, and wherein the same consisted; and also to compel the Defendant to pay a Debt of 25 *l.* and Interest due upon Bond to *J. D.* late of *L.* deceased, to whom the Plaintiff is Administratrix, and to answer all the Matters charged in the Complainant's said Bill, is the Scope of the Bill.

Whereunto the said Defendant by his Answer saith, Answer. That he believes it to be true, that the Plaintiff is Administratrix to *J. D.* late of *L.* deceased, but knows it not of his own Knowledge; neither doth he know that *J. B.* in the Bill named, did make Application to borrow of *J. D.* the Sum of 25 *l.* or that there was any Application made to the said *J. D.* by *A. B.* and *J. S.* in the Bill named, on behalf of the said *J. B.* or that the said *J. D.* did about the Time in the Bill mentioned, or at any other Time, lend unto the said *A. B.* and *J. S.* or either of them, the said 25 *l.* or

Of Exceptions to Answers.

or any other Sum; or that there was any Bond entered into by the said *A. B.* and *J. S.* or either of them, unto the said *J. D.* in his Life time, of the Penalty of 50*l.* for Payment of 25*l.* as in the Bill is mentioned, or in any other Sum whatsoever, *fo. 29, 30, 31, &c.* Says, He believes it to be true, that *J. S. &c.* are all dead; but whether *A. B. J. S.* or, *&c.* died intestate, knows not. *Denies* he is either Executor or Administrator to the said *A. B.* or *J. D.* or either of them, or that either of their Estates came to his Hands. But *confesseth*, That in or about *August 1699.* the said *J. S.* made his last Will, and the Defendant Executor thereof, and soon after died; That the Defendant proved, *&c.* and by Vertue thereof possessed himself of the whole personal Estate of the said *J. S.* which neither was, nor is near sufficient to discharge his Funeral Expences, and Debts upon Bonds and Judgments; and then sets forth a Particular of *J. S.*'s Estate in a Schedule annex'd to his Answer evasively, and without the Values of certain Leases for Years, *&c.* For which, and for several other Reasons the Plaintiff excepts against the said Defendant's Answer as insufficient.

1st. Exception.

Imprimis, For that the Defendant in his Answer, *fol. . . .* confesses a Lease from Sir *W. J.* to the said *J. S.* for 21 Years at 72*l. per Annum*, and that there was 10 Years to come at his Death, but doth not set forth where the Estate lies that was so leased, nor the Rent reserv'd, nor the Tenants Names that have been in Possession thereof since the said *J. S.*'s Death; so that the Plaintiff might have inquired into the same as to the Rent reserved, and the Value of the Premises, *&c.*

2d. Exception.

Item, For that the Defendant in his Answer, *fol. . .* confesseth that there came to his Hands a Lease granted from one *Mr. P.* to the said *J. S.* to whom the Defendant is Executor as aforesaid, but doth not set forth, whether the said Lease was of Houses or Lands, now where the same lies, nor the Tenants Names that are or were in Possession of the same at the Time of the said *J. S.*'s Death, nor what Term of Years was then, or is still to come in the said Lease; he only saying, that the same was at a Rack Rent, which is
alto-

altogether evasive, inſomuch as the Plaintiff cannot by any Means inquire into, or find out the true Value of the ſame, &c.

Item, For that the Defendant in his Answer, fol. ... 3d. Excepti-
confeſſeth, that there came to his Hands a Leaſe on.
granted from Sir N. C. at a Rack Rent, and that
the ſame expired at *Chriſtmas* after the ſaid J. S. his
Death; but doth not ſet forth whether the ſaid Leaſe
was of Houſes or Lands, not where the ſame lies, nor,
&c. *Supra*.

All which Points and Particulars aforeſaid, the De-
fendant ought to have directly and expreſly an-
ſwered unto; ſo that the Plaintiff might have
inquired into the ſame, the ſame being required
by the Plaintiff's Bill. And therefore the Plain-
tiff excepts againſt the ſaid Answer as imperfect
and inſufficient in the Particulars aforeſaid; and
prays that the ſaid Defendant may amend the
ſame, and give in a perfect Answer to the ſaid
Bill.

*Exceptions taken by the Complainants J. C. and T. D.
to the Answer of E. T. one of the Defendants in the Bill
of Complaint of the ſaid Complainants.*

Another
Form of Ex-
ceptions to
an Answer.
Bill.

THE End of the Complainants Bill is to be relie-
ved againſt a pretended Settlement which the De-
fendant ſets up againſt the Complainants, who are
Mortgagees of the Defendant's Huſband for 1200 l.
principal Money lent upon the Manor of H. and di-
vers Meſſuages, Lands, &c. in H. in the County of C.
And the Complainants by their Bills, fo. 6 & 7 particu-
larly charge, That the Defendant E. T. and D. her pre-
tended Daughter, pretend and give out in Speeches,
That upon the Defendant's Marriage all the ſaid Ma-
nors, Lands and Premises conveyed for the Complain-
ants Security, are ſetled upon Truſtees for the Uſe of
the Defendant for her Jointure, and after the Deceafe
of her and her Huſband, to the Heirs Male of their
Bodies; and for Want of ſuch Iſſue, to the Uſe of
their Heirs Female, or otherwiſe, for raiſing of ſeve-
ral large Sums of Money for the Portions and Main-
tenance of ſuch Iſſue Female. And the ſaid D. the
Daughter

Of Exceptions to Answers.

Daughter of the Defendant *E.* and pretended Daughter of the Defendant's Husband, who is endeavoured to be set up for the only Issue-Female; such Daughter, after the Decease of the Defendant and her said Husband, will be entitled to the whole Estate, or at least that 2 or 3000*l.* or some other great Sum must be raised thereout by the Trustees for the Portion and Maintenance of the said pretended Daughter, beyond which the said mortgaged Estate will not be sufficient to secure the Complainants Monies, when in Truth, such Settlements and Incumbrances, if any, were voluntarily made and entred inro, and such pretended Daughter was set up by the said Defendant *E.* and connived at by the other Defendant her Husband, to defraud the Complainants of their said Monies, and therefore ought to be detected, and such voluntary Settlements set aside. And the Complainants being in Nature of Purchasors for a valuable Consideration, ought in the first Place to receive their Monies lent with Interest. And in *fol.* 8 & 9 of the said Bill a Discovery is prayed, Whether the said Manor and Premises, or some Part of them, and what in Particular were not upon the Marriage of the said Defendants, settled and conveyed unto, and upon some Persons, and what Persons by Name, in Trust for such and such like Uses and Purposes, as before charged, and what in particular; and may set forth the Dates and Contents of such Conveyances or Settlements, with the Names of the Parties and Witnesses thereto, and at what Time, and for what Consideration the same were made and executed; and whether the Defendants have any Issue Male or Female, and where such Issue is.

Answer.

To which the Defendant by her Answer, *fol.* 3, 4, and 5, only saith, That before her Marriage with the other Defendant her said Husband, all and singular the Lands, Tenements and Hereditaments and Premises in the said Complainants Bill of Complaint mentioned to be mortgaged to the Complainants, or a great Part thereof, were (in Consideration of a Marriage then to be had between the said *T. T.* and the Defendant *E.* and which afterwards took Effect) settled in Jointure upon the Defendant for her Life, to take Effect

Effect in Possession after the Death of the said T. T. o of the said Defendant, or some other Provision is thereby made for the Issue of that Marriage.

To which said Answer the said Complainants do Exception. except as evasive and insufficient; For that the said Defendant doth not set forth the Date of such Marriage-Settlement, the Witnesses Names, nor the Contents thereof, nor the Parties thereunto; which if *she had pleaded*, she must have done. Nor doth she deny, or set forth what Portion or Portions, or other Maintenance the same Female Issue of the said Marriage ought to have, or will insist upon, or what Limitations are made to Trustees in such pretended Settlement; nor the particular Lands settled in Jointure upon the said Marriage: But the said Answer is altogether evasive, the Complainants not intending to impeach, but discover the Defendant's Title, and her pretended Daughter's Interest in the said mortgaged Premises, that they may take what prudent Care is possible for the better Security of the said Monies so really and *bonâ fide* lent by them thereupon.

And therefore the said Complainants do except to the said Answer, and pray that the Effect of their Bill of Complaint may be answered, so that they may have the End of their Suit, and such Relief therein, as the Nature of their Cause will admit.

Inter R. W. Gen. Quer. & M. D. Spinster Defendantem.

Exceptions taken and filed in this Court by the said Plaintiff to the Insufficiencies of the Answer of the said Defendant, put in to the said Plaintiff's Bill of Complaint. Exceptions taken to an Answer. Another Form.

THE End of the Complainant's Bill, is to be paid for his Care, Labour and Pains in soliciting on the Behalf of the Defendant, a Cause formerly depending in this Court between the said M. D. then Complainant, and one P. R. & al. Defendants, and to have such Disbursements and Fees allowed him as this Complainant laid out and expended therein, or are otherwise

Of Exceptions to Answers.

otherwise due to him for soliciting and managing the said Cause.

And to that End the Bill sets forth and chargeth, That the Complainant having for about two Years solicited and managed the said Cause, he the said *P. R.* was afterwards (*at such a Time*) by the extraordinary Pains and Care of this Complainant, brought to Terms of Agreement with the said *M. D.* and induced to end and determine the same to the good Liking and Satisfaction of the said *M.*

1st. Exception.

To which Allegation and Charge of the said Bill the said Defendant doth not give any Manner of Answer, but uses railing and scandalous Language against the said Complainant touching the same; and therefore this Complainant excepts to the said Answer as insufficient, and impertinent and scandalous in that Particular.

The said Bill likewise sets forth and charges, That the Terms so agreed on by the said *P. R.* were, That the said *P.* should pay to the said *M.* 315 *l.* and likewise deliver up to *M.* the Mortgage-Deeds of an Estate near *D.* in *Com. K.* whereon was then due near 400 *l.* and also a Bond for 200 *l.* from one Mrs. *R.* besides a Diamond-Ring, &c. And that all the said Terms of Agreement were punctually performed by the said *P. R.* on or before (*such a Day*) and that the said *P. R.* was induced to the Performance of the same by the great Care, Dilligence and Fidelity of the said *R. W.*

2d. Exception.

To which said Charge in the Bill, or to any Part thereof, the Defendant doth not give any manner of Answer, nor doth she in her Answer set forth of acknowledge any Agreement made between her and the said *P. R.* or who was instrumental in making the same, or whether the said *P. R.* hath performed the same, or any Part thereof; and for that the Bill chargeth, that the said Agreement was made and performed at the Instance and Solicitation of this Complainant, the said Defendant ought to have answered the same; and for that she hath not, therefore this Defendant excepts to the said Answer as imperfect and insufficient in that Particular.

The

The said Bill also sets forth, and charges, That the said Defendant *M. D.* having demanded a Bill of Costs of the Complainant, and the Complainant delivering the same to her, she the said Defendant by Motion of this Court, on or about the Ninth Day of *June* last, got the said Bill referred by Order of this Court to *Mr. H.* one of the Masters of this Court, to be taxed.

To which Charge in the said Bill, the said Defendant hath given no manner of Answer, which this Complainant conceives she ought to have done; for that the said Bill charges the said Order of Reference to be made upon her own Motion; and therefore this Complainant excepts to the said Answer as imperfect and insufficient in that Particular also. 3d Exception.

And the said Bill doth further set forth and charge, That the said Defendant did afterwards (*viz.* such a Day) serve the said Complainant with a Summons to attend the said Master, in order to tax the said Complainant's Bill of Costs, and that the said Defendant attending accordingly, she the said Defendant refused to proceed in taxing the said Bill, contrary to the Order of the Court made upon her own Motion.

To which Charge in the said Bill of Complaint, the said Defendant hath give no manner of Answer, whereas the Complainant humbly conceives she ought to have particularly answered the said Charge of Service of the Summons, for that the same is by the Complainant's Bill charged on her as on her own Act, and that she afterwards refused to proceed in taxing the same, contrary to the Order of this Court made upon her own Motion. And therefore this Complainant excepts to the said Answer as imperfect, &c. in that Particular also. 4th Exception.

In all which said Particulars this Complainant conceives the said Answer to be imperfect, evasive, impertinent or insufficient, and therefore prays he may have his Costs awarded him by this Court, and that the said Defendant may be compelled by Order of this Court to put in a full, perfect and sufficient Answer to the Complainant's said Bill of Complaint. *And he shall ever Pray, &c. W.B.*

And Note, If any of these Exceptions are allowed, the Defendant is to put in a further Answer, *viz.*

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The

The further Answer of T. D. Esquire, one of the Defendants to the Bill of Complaint of G. F. Complainant.

Precedents of further Answers.

The said Defendant saving to himself as by his former Answer he hath already saved, for further Answer unto the said Complainant's Bill, or unto so much thereof as this Defendant is advised is material for him this Defendant to make Answer unto, he saith, That the Testator *F. R.* in the said Bill named, did by his last Will and Testament dated, &c. give and devise unto his Son *E. R.* and his Heirs and Assigns for ever, all his Manors, Messuages, Lands, Tenements, and Hereditaments, and all his real Estate in the Counties of, &c. and elsewhere in the Kingdom of *Gr. Britain*, and by the said Will gave divers Legacies to divers Persons therein named, and of his said Will constituted the said *E. R.* his said Son together with this Defendant, and one *J. D.* to be Executors, and the said Testator by his said Will, after Payment of his Debts, Legacies, and Funerals, gave all the Rest and Residue of his Estate, Real and Personal, to his said Son *E.* as in and by the said last Will and Testament, had this Defendant the same to produce, and to which for more Certainty he refers himself, it doth and may appear. And this Defendant saith, That after the said Testator's Death, the said *E. R.* alone proved the said Will in the Prerogative Court of *Canterbury*, (this Defendant, and the said *J. D.* the other Executor or either of them not joining in the Probate thereof.) And this Defendant saith, That he doth not know or believe that the said Testator did make any other Will before mention'd, or otherwise charge or subject his Real or Personal Estate, or any other Part thereof, with or to the Payment of his Debts, otherwise than as this Defendant by his former Answer, and by his present Answer hath already set forth. Nor doth this Defendant know or believe, That the said Testator did by any Deed or Assurance, or Deeds or Assurances, other than by the said Will, settle or subject his Real Estate, or any Part thereof, for the Payment of his Debts. Without that, that any other Matter, Cause, or Thing, in the Complainant's said

said Bill of Complaint contained, and not herein and hereby, and in and by this Defendant's former Answer, answered unto, confessed or avoided, travers'd or denied, is true to the Knowledge or Belief of this Defendant, all which Matter and Things this Defendant is and shall be ready to aver, justify, maintain, and prove, as this Honourable Court shall award, and therefore prays as in and by his former Answer he hath already prayed.

The further joint, and several Answer of D. T. and F. I. Esquires, two of the Defendants to the Bill of Complaint of M. S. Widow, Complainant.

The said Defendants for further Satisfaction of this Honourable Court, for Answer unto the several Exceptions taken by the Complainant to their former Answer, do jointly and severally answer and say as they are advised. And first, they jointly say, That their former Answer by them put in to the said Complainant's Bill is sufficient to all the material Charges thereof, or therein contained, howbeit they, these Defendants, and either of them for a further Answer thereunto, do jointly and severally say, They did not know, hear, or were informed until some few Days before the Death of L. S. That the Deeds or Conveyances to Sir E. D. were executed by the E. of S. and the said Trustees, nor do these Defendants know, or ever heard, or were informed of the Time when they were so executed by them, nor how long before the Purchase-Money was paid, &c. and so set out the Particulars of what the Defendants do jointly deny of such Matters as are either charged on them, or whereof a Discovery is prayed in the Bill, either as to their Knowledge, Belief, Hearsay, or Information.

And Note as to many Particulars charged in a Bill they may in the Answer be denied in general, and yet confessed and avoided in particular, as where the Bill charges or prays a Discovery, whether the said Defendants have not been informed that the said Sir E. D. did refuse or decline the Purchase, and when they were so informed and by whom, the Answer may be thus.

A further Answer of several Defendants jointly and severally.

Note.

Of further Answerg.

And these Defendants and either of them further say, That they do not know, nor have they heard or been inform'd, That the said Sir E. D. did refuse or decline the said Purchase; but these Defendants confess they were inform'd, That the said Sir E. D. having Money ready in a Goldsmith's Hands, intended for the said Purchase, he the said Sir E. D. did refuse to pay the same till the said Trustees had joined in the Deeds of Conveyance to him, but the precise Time when they were so informed, or by whom, these Defendants do not remember. (*also thus*) and these Defendants or either of them do not know, have heard, or were informed, That Sir E. D. did on or about the Time in the Bill mentioned, deliver up the said Goldsmiths Notes, and take other Notes to himself, or disposed of the said Moneys, or any Part thereof, for other purposes, or that he did not take any Goldsmiths Notes afterwards; but these Defendants do confess they have heard and believe, that the said Sir E. D. did refuse to take any more Goldsmiths Notes payable to the said L. S. till the said Sir E. D. and the said L. S. had ended a Dispute between them about the Interest of Money formerly lent. And these Defendants do aver and say, that after such account of Interest was settled, he the said Sir E. D. did take and receive divers Goldsmiths Notes payable to the said L. S. and the said Defendant T. D. severally and particularly saith, That on or about *&c.* last, when the said Sir E. D. came to this Defendant's Shop, and did appoint him to meet him the same Day in the Afternoon at the *Middle-Temple-Hall*, about receiving the Money so assigned to him by the said L. S. he the said Sir E. D. then told this Defendant that he had taken Goldsmiths Notes for some of the said Purchase-Money. But these Defendants severally say, They know not, have heard, or were informed, otherwise than by the Complainant's said Bill, when the Disputes about Interest between the said L. S. and the said E. D. were ended. And this Defendant T. D. further saith, and denieth he had any private, or any other Intimations from the said E. D. or any other how the said Purchase proceeded, or what likelihood there was of accommodating any Disputes relating

relating thereunto, till in or about the said Month of *November* last: And this Defendant *T. D.* also saith, That after the 23d Day of the said Month of *November* and not before, he this Defendant did, upon the said *L. S.*'s further Order, several Times request the said Sir *E. D.* to pay the said 5277 *l.* to him, and this Defendant hath heard and believes, That Mr. *R. W.* had oftentimes before pressed the said Sir *E. D.* to pay the said Money to *L. S.* But this Defendant *T. D.* doth deny that either this Defendant, or the said Mr. *R. W.* to this Defendant's Knowledge or Belief, or any other Person whatsoever, did either before or after the Death of the said *L. S.* offer to the said Sir *E. D.* any Manner of Abatement, Allowance, or Gratuity, if he would pay the said Money; But this Defendant *T. D.* believes that Sir *E. D.* was more cautious, and fearful of Trouble, than he had just Reason for, and that made him delay for some Time, and at length refuse to pay the said Money, altho' he safely might and ought to have paid the same as this Defendant is advised and humbly conceives. *And so either jointly or severally deny, whatever is excepted to as omitted in the former Answer. And conclude with a Traverse, without that, that, &c. as before.*

Of Hearings upon Bill and Answer.

When the Plaintiff finds sufficient Matter confess'd in the Defendant's Answer, whereupon to ground an Order or Decree, he may proceed to a Hearing upon the Bill and Answer, and by the late Orders in Chancery, *Page 122.* it seems the Plaintiff ought to do so. When it may be.

And in such Cases, the Answer is to be admitted true in all Points as to the Particulars charg'd in the Bill, and no other Evidence is to be read, than what arises from the Answer it self. Answer to be admitted true.

And therefore in many Cases, Tho' the Cause require no Witnesses, yet it may be necessary for the Plaintiff to reply, &c. whereby the Defendant will be put upon Proof of his Answer, and the Plaintiff admitted to prove the Matters of his Bill. Needful to reply, &c.

And if on the Hearing by Bill and Answer, the Court shall not find any Ground to make a Decree or Order for the Plaintiff, the Bill will be dismiss'd with Costs. Bill dismiss'd, or Plaintiff replies, on paying 5 *l.* Yet Costs.

Order there-
on.

Yet on Cause shewn, the Plaintiff if he desire it, may be admitted to reply on his paying down 5 *l.* Costs within four Days after such Hearing, or such other Costs as the Court shall direct, else the Dismission is to stand, and the Order thereupon to be drawn up accordingly, *viz.* For that the Plaintiff hath not paid such Costs within such Time, therefore the Order for Dismission to stand, &c.

Bar of a
new Bill.

And such Order of Dismission, if duly signed and enrolled, will be a good Plea in Barr of a new Bill brought for the same Matter.

Manner of
such Hearing
and Evidence
thereupon.

The Manner of Hearing upon Bill and Answer, is generally thus; After the Substance of the Bill has been opened by some junior Counsel, and the Matter of Equity thereof duly represented to the Court, the Answer of the Defendant is to be read throughout, and must be admitted true in all Points. And no other Evidence is to be given, but matter of Record, to which the Answer refers, and which is proveable by the Record. *Ord. Chan. 122.*

Reply, &c.

But if the Plaintiff reply to an Answer, and without Rejoinder or Rules given for Publication, brings the Cause to Hearing, the Answer shall be taken wholly true as if there had been no Replication; for the Defendant's Opportunity of proving his Answer is taken from him. *Vide 1 Chan. Cases 21.*

Costs on a
needless Re-
ply.

And if it be needful to prove one or a few particular Points of the Bill, the Plaintiff is to reply to those Points only, on pain of paying Costs for the Copies, or otherwise, as the Court shall direct, or the Case require. *Ord. Chan. 122.*

Disclaimer,
Plea or De-
murr.

Also where the Defendant doth disclaim or doth not answer, but pleads or demurrs, the Plaintiff is not to reply; and if he doth serve the Defendant with a *Subpœna* to rejoin, the Defendant may have Costs for the unjust Vexation.

Will or Deed
confess'd.

Where a Will or other Deed is confess'd by the Answer, and referred to, there ought to be no Replication, but to proceed thereupon to hearing on Bill and Answer.

A Trust con-
fess'd.

So where a Trust is confess'd by the Answer, there needs nothing further but to proceed to Hearing, and the Court thereupon will refer the Accounts of the Trustee

Trustee to be stated, and when that is done, decree a Discharge of the Trustee on his paying the Balance.

Touching Hearings upon the Examination of Witnesses, and Publication of their Depositions, see hereafter in the proper Chapter, and I shall conclude this, with an Extract of an Order made, touching Answers and Hearings upon Bill and Answer, containing the Substance of some of the foregoing Rules. *Vide* Ord. Chan. 121, 122.

" After a Commission once obtained to answer, no second Commission shall be granted without special Order of Court upon good Reason, shewed to induce the same on the Plaintiff's own Assent.

Ord. Chan.
121.

No second
Commission
to Answer,
without Or-
der.

" An Answer to a Matter charged as a Defendant's own Fact must regularly be without saying *To his Remembrance*, or *as he believeth*, if it be laid to be done within seven Years before; unless the Court upon Exceptions taken shall find special Cause to dispense with so positive an Answer.

Answer how
to be drawn.

" And if the Defendant deny the Fact, he must traverse or deny it directly, and not by Way of *Negative pregnant*; as if he be charg'd with the Receipt of a Sum of Money, he must deny or traverse, That he hath not receiv'd that Sum, or any Part thereof, or else set forth what Part thereof he hath received, &c.

Not to tra-
verse by Way
of *Negative
pregnant*.

" And if a Fact be laid to be done with divers (*immaterial*) Circumstances, the Defendant must not deny or traverse such Circumstances literally, as laid in the Bill, but must answer the Point of Substance positively and certainly.

Substance,
and not Cir-
cumstances
to be an-
swered.

" When the Defendants have answered, the Plaintiffs and their Counsel are seriously to advise of the Answers, and if they find that upon the Answer alone, without further Proof, there be sufficient Ground for a final Order or Decree, to proceed upon the Answer without further lengthening of the Cause.

Proceedings
upon Bill
and Answer.

" Or if it be needful to prove one or a few particular Points, to reply unto those Points, and not to draw into Pleading or Proofs any more than those necessary Points, thereby making long Books,

Replications.

Of Replications, Rejoinders,

No other E-
vidence.

A Caution.

“ and putting both Sides to unnecessary Charges,
“ the Defaulters herein to be punished by paying the
“ Charge of the Copies, or otherwise, as the Cause
“ shall require.

“ If a Hearing be pray'd upon Bill and Answer,
“ the Answer must be admitted to be true in all Points,
“ and no other Evidence be admitted, unless it be
“ Matter of Record to which the Answer refers, and
“ is proveable by the Record.

“ The Plaintiff is therefore to be well advised, that
“ the Court be not put to an unnecessary Trouble,
“ and himself to a certain Charge in bringing his
“ Cause to hearing which will not bear a De-
“ cree.

C H A P. VII.

Of Replications, Rejoinders, and Sur-
rejoinders.

Replication,
what.

A *Replication* is the Plaintiff's Answer or Reply to the Defendant's Answer, and is to be an Averring or Enforcing of the Allegations in the Bill, and an Avoiding or Denying of the Matters contained in the Answer.

Must be ge-
neral, except
new Matter
in the An-
swer.

The Replication must be general, except the Defendant by his Answer offers new Matter, which will not be brought into Issue by the Bill and Answer, or that he denies only one, or some few Points of the Bill. *Vide Ord. Chan. 122.*

Affirm the
Bill.

It must affirm and aver the Bill to be true, and must confess and avoid, or traverse and deny the Answer. Also it must be short and not stuff'd with Tautologies, or impertinent or criminal Matter, but directly and pertinently pursue the Substance of the Bill, and confess and avoid, traverse or deny the Answer.

Short.

No new
Matter.

And it must by no Means be a Departure from the Bill; for the Plaintiff must have his Decree *secundum Formam Petitionis*. It must contain no new Matter, except

except it be to avoid (new) Matter set forth in the Defendant's Answer.

If upon the Answer alone, without further Proof, there be sufficient Ground for a final Order or Decree, the Plaintiff shall proceed to Hearing, without Replying or Examination of Witnesses; as if the Complainant makes his Title by a Will, or other Conveyance in the Defendant's Hands, and the Defendant by his Answer confesses it, &c. and in such Case the Answer is taken as true in all Points. Hearing on Bill, &c.

And if it be needful to prove one, or a few particular Points, the Plaintiff is to reply to those Points only on Pain of Costs, &c. *Vide ante pag. 151.*

If the Plaintiff reply to an Answer, and without rejoining and giving Rules for Publication, bring the Cause to an Hearing, the Answer shall be taken wholly true, as if there had been no Replication; for the Opportunity which the Defendant hath to prove his Answer is taken from him. *2 Chan. Caf. 21. inter Grosvenor & Cartwright, Hill. 31 and 92 Car. 2.* Where, upon a Replication, the Answer shall be taken wholly true.

The Plaintiff hath all the Term the Answer comes in to reply, and the Defendant might in any following Term give the Plaintiff a Rule to reply within eight Days after, and within the Term, wherein if he failed, the Bill might be dismissed with Costs without Motion. Time to reply.

And if no Rule were given, then if the Replication come not in before the End of the second Term, after the Term that the Answer came in, upon Certificate thereof from the Six Clerk, the Bill might have been dismiss'd with Costs.

But since the late Act, whereby full Costs are to be paid upon Dismission, the Court has indulged the Plaintiff till the End of the third Term, and this is now the Course of the Court. Three Terms before the Bill dismiss'd.

But if a Replication come in before the Rule is out, or any Order for a Dismission pronounced, tho' it be after the End of the third Term, the Bill shall not be dismiss'd, nor shall the Defendant have Costs. Dismission for want of Replication.

And though there be such a Dismission for want of a Replication (or other Proceeding) yet the Court does for the most Part easily admit and order the Bill to be retained upon Payment of Costs. Retained on paying Costs.

And

Of Replications, Rejoinders,

Dismission
after Repl.

And after a Replication put in, if the Plaintiff ceases all kind of Prosecution for a Year, the Bill may upon Certificate and Motion be dismiss'd.

Replication
containing
more than
the Bill, de-
murred to.

The Plaintiff putting Matter in the Replication which was not contained in the Bill, and which Matter the Plaintiff knew of at the exhibiting of the Bill: The Defendant pleaded and demurred to the Replication, which this Court allowed of. *1 Chan. Rep. 259. Goodfellow contra Marshall, 17 Car. 2.*

Rules for
Replication.
How entred.

Note, The Rules for Replication ought to be given, (*i. e.* entred in the House-Book, as they call it, which is kept in the Office) eight Days at least before the End, and exclusive of the last Day of the Term; that is, it must be entred at least the Morning of the eighth Day before the last.

And *note*, all other Rules as well as this must be entred in Term.

Reply or
Rejoin *gratis*.

And if the Parties live in Town, or that there be not many Witnesses to examine, either Side may move that the other may reply or rejoin *gratis*, and examine Witnesses and fix a Time for Publication to

sufficient to be replied unto, and this Repliant is ready to aver, maintain, and prove the same, as this honourable Court shall award; and humbly prays as in and by his said Bill he hath already prayed.

The Replication of T. B. Administrator de Bonis non, to R. P. late of London deceased, to the Answer of E. H. Esq; Defendant.

THE said Repliant saving and reserving to himself now and all Times hereafter, all and all Manner of Advantage of Exception to, &c. For Replication saith, in all and every the Matters and Things as in and by his said Bill of Complaint he hath already said, and will aver, justifie, maintain and prove his said Bill of Complaint, and all and every the Matters and Things therein contained to be good, true, certain and sufficient in the Law to be answered unto, in such Manner and Form as the same are therein and thereby set forth and declared; and that the An-

Another general Replication.

Of Replications, Rejoinders,

No other Evidence.

A Caution.

“ and putting both Sides to unnecessary Charges,
 “ the Defaulters herein to be punished by paying the
 “ Charge of the Copies, or otherwise, as the Cause
 “ shall require.

“ If a Hearing be pray'd upon Bill and Answer,
 “ the Answer must be admitted to be true in all Points,
 “ and no other Evidence be admitted, unless it be
 “ Matter of Record to which the Answer refers, and
 “ is proveable by the Record.

“ The Plaintiff is therefore to be well advised, that
 “ the Court be not put to an unnecessary Trouble,
 “ and himself to a certain Charge in bringing his
 “ Cause to hearing which will not bear a De-
 “ cree.

C H A P. VII.

Of Replications, Rejoinders, and Surrejoinders.

Replication, what.

A *Replication* is the Plaintiff's Answer or Reply to the Defendant's Answer, and is to be an Averring or Enforcing of the Allegations in the Bill, and an Avoiding or Denying of the Matters contained in the Answer.

Must be general, except new Matter in the Answer.

The Replication must be general, except the Defendant by his Answer offers new Matter, which will not be brought into Issue by the Bill and Answer; or that he denies only one, or some few Points of the Bill. *Vide Ord. Chan. 122.*

Affirm the Bill.

Short.

It must affirm and aver the Bill to be true, and must confess and avoid, or traverse and deny the Answer. Also it must be short and not stuff'd with Tautologies, or impertinent or criminal Matter, but directly and pertinently pursue the Substance of the Bill, and confess and avoid, traverse or deny the Answer.

No new Matter.

And it must by no Means be a Departure from the Bill; for the Plaintiff must have his Decree *secundum Formam Petitionis*. It must contain no new Matter, except

except it be to avoid (new) Matter set forth in the Defendant's Answer.

If upon the Answer alone, without further Proof, there be sufficient Ground for a final Order or Decree, the Plaintiff shall proceed to Hearing, without Replying or Examination of Witnesses; as if the Complainant makes his Title by a Will, or other Conveyance in the Defendant's Hands, and the Defendant by his Answer confesses it, &c. and in such Case the Answer is taken as true in all Points. Hearing on Bill, &c.

And if it be needful to prove one, or a few particular Points, the Plaintiff is to reply to those Points only on Pain of Costs, &c. *Vide ante pag. 151.*

If the Plaintiff reply to an Answer, and without rejoining and giving Rules for Publication, bring the Cause to an Hearing, the Answer shall be taken wholly true, as if there had been no Replication; for the Opportunity which the Defendant hath to prove his Answer is taken from him. *2 Chan. Caf. 21. inter Grosvenor & Cartwright, Hill. 31 and 92 Car. 2.* Where, upon a Replication, the Answer shall be taken wholly true.

The Plaintiff hath all the Term the Answer comes in to reply, and the Defendant might in any following Term give the Plaintiff a Rule to reply within eight Days after, and within the Term, wherein if he failed, the Bill might be dismissed with Costs without Motion. Time to reply.

And if no Rule were given, then if the Replication come not in before the End of the second Term, after the Term that the Answer came in, upon Certificate thereof from the Six Clerk, the Bill might have been dismiss'd with Costs.

But since the late Act, whereby full Costs are to be paid upon Dismission, the Court has indulged the Plaintiff till the End of the third Term, and this is now the Course of the Court. Three Terms before the Bill dismiss'd.

But if a Replication come in before the Rule is out, or any Order for a Dismission pronounced, tho' it be after the End of the third Term, the Bill shall not be dismiss'd, nor shall the Defendant have Costs. Dismission for want of Replication.

And though there be such a Dismission for want of a Replication (or other Proceeding) yet the Court does for the most Part easily admit and order the Bill to be retained upon Payment of Costs. Retained on paying Costs.

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And after a Replication put in, if the Plaintiff ceases all kind of Prosecution for a Year, the Bill may upon Certificate and Motion be dismiss'd.

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The Plaintiff putting Matter in the Replication which was not contained in the Bill, and which Matter the Plaintiff knew of at the exhibiting of the Bill: The Defendant pleaded and demurred to the Replication, which this Court allowed of. 1 *Chan. Rep.* 259. *Goodfellow contra Marshall*, 17 *Car* 2.

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Note, The Rules for Replication ought to be given, (*i. e.* entred in the House-Book, as they call it, which is kept in the Office) eight Days at least before the End, and exclusive of the last Day of the Term; that is, it must be entred at least the Morning of the eighth Day before the last.

And *note*, all other Rules as well as this must be entred in Term.

Reply or
Rejoin *gratis*.

And if the Parties live in Town, or that there be not many Witnesses to examine, either Side may move that the other may reply or rejoin *gratis*, and examine Witnesses, and fix a Time for Publication to pass, and to hear the Cause.

Also if the Plaintiff hath replied, the Defendant may, if he will, rejoin *gratis*, without any Motion for that Purpose.

See more touching Replications in the precedent Chapter.

A Replication to the Defendant's Answer, is either general or special.

A general Replication is in this Form, *viz.*

The Replication of A. B. Gen. Complainant, to the Answer of C. D. Gen. Defendant, put into the said Repliant's Bill of Complaint.

Form of a
general Re-
plication.

TH E said Repliant saving to himself all Advantages of Exception to the Incertainties, Untruths, and Insufficiencies of the Defendant's said Answer, for Replication thereunto, saith, That all and singular the Matters and Things in the Repliant's said Bill contained are true, as the same are therein alledged; and that the Answer of the said Defendant to the said Bill is very untrue, imperfect, and insufficient

sufficient to be replied unto, and this Repliant is ready to aver, maintain, and prove the same, as this honourable Court shall award; and humbly prays as in and by his said Bill he hath already prayed.

The Replication of T. B. Administrator de Bonis non, to R. P. late of London deceased, to the Answer of E. H. Esq; Defendant.

THE said Repliant saving and reserving to himself now and all Times hereafter, all and all Manner of Advantage of Exception to, &c. For Replication saith, in all and every the Matters and Things as in and by his said Bill of Complaint he hath already said, and will aver, justifie, maintain and prove his said Bill of Complaint, and all and every the Matters and Things therein contained to be good, true, certain and sufficient in the Law to be answered unto, in such Manner and Form as the same are therein and thereby *set forth and declared*; and that the Answer of the said Defendant is very untrue, and altogether insufficient in the Law, to be by this Repliant replied unto for divers manifest Imperfections and Incertainties therein contained, the Benefit and Advantage of Exception whereunto, being now and at all Times saved unto this Repliant, this Repliant for farther Replication saith, That the Matters contained in his said Bill of Complaint, are altogether relievable in this Honourable Court, without that that any other Matter or Thing in the said Defendant's Answer contained, material or effectual in the Law to be replied unto, and herein and hereby not well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which Matters and Things this Repliant is ready to aver, &c. *ut supra*.

Another general Replication.

The said Repliant, &c. [to the Words *set forth and declared*] (*ut supra*.) And that the Answers of the said Defendants, and every of them, in all the material Points and Allegations thereof, touching or concerning this Repliant, are very untrue, without that that any other Matter or Thing in the said Answers of the said Defendants, or any of them contained,

The Form of a Replication to several Answers.

Of Replications, Rejoinders,

ed, material or effectual in the Law for this Repliant to reply unto, and herein not well and sufficiently replied unto, confessed or avoided, traversed or denied, are true. All and every which said Matters and Things this Repliant is ready to aver, justifie, maintain and prove as this honourable Court shall award; and humbly prays, &c. *ut supra*.

An Abridgment of a Bill and Answer, with the Form of a special Replication to the Answer.

A Bill was exhibited against a Defendant's Husband, his Wife and Daughter, for that they by Practice with the Plaintiff's Wife deceased, had received of her, and detained the Plaintiff's Goods, setting forth, That the Plaintiff being about four Years past, possessed of Goods and Money to a great Value, the Defendants, to the End they might get the same into their Custody, and in order to defraud the Plaintiff thereof, did by sinister Practice with the Plaintiff's Wife, allure and intice her to grow to Discord with him, and to convey the said Goods, &c. into their, or some of their keeping, &c. promising the same should be ready for her Use, &c. And so it is the Plaintiff's said Wife did thereupon at divers Times break open the Plaintiff's House at S. with divers Boxes and Chests, &c. there, and esloined divers Sums of Money, and Parcels of Goods to a great Value, and delivered the same to the Defendants. Of which Doings the Plaintiff having got Intelligence, applied to the said Defendants, and in a friendly Manner desired Restitution or Recompence for the same, which they refuse to do, and convert them to their own Use, &c.

The Answer to the said Bill.

To which the Defendants answer, That the Plaintiff hath exhibited the Bill out of Malice conceived against the Husband, and to vex, molest, weary and impoverish him and his Family, so that they shall not be able to prosecute the Law against the Plaintiff for divers Sums of Money owing to him by the Plaintiff, and nor for any just Cause; and the Defendants deny all sinister Practices, &c. with the Plaintiff's Wife, or that they allured or inticed her to grow to Discord with the Plaintiff, or to esloin or convey into their keeping any of the Plaintiff's Money or Goods in the Bill mentioned, or made any Promise that the same

same should be ready for her Use, &c. and so they deny particularly all the Allegations of the Bill.

The Replication of A. B. Gen. Complainant, to the Answer of C. C. and M. his Wife, and O. their Daughter, Defendants.

THE said Repliant saving, &c. For and by Way of Replication saith, That his said Bill of Complaint exhibited in this Court against the said Defendants, and all and every the Matters and Things therein contained, is true and sufficient in the Law to be answered unto, and not devised or exhibited out of Malice or ill Will conceived against the said C. C. with intent to vex, molest, weary or impoverish him or his Family, so that they shall not be able to prosecute, &c. (*as in the Answer.*) And as to any Sum or Sums of Money due or owing by this Repliant to the said Defendant, the Repliant saving and reserving all Benefit and Advantage of Exception, saith, That he this Repliant doth not owe, or is indebted to the said Defendant in any Sum or Sums of Money whatsoever, and humbly conceives, and is advised, That if the same Allegations of the Defendant in his Answer were true, the same ought not to preclude this Repliant from being relieved in this honourable Court, according to the Prayer of his this Repliant's Bill. And this Repliant doth aver, and is ready to maintain and prove, that this Repliant's Wife did at divers Times break open some Part of his House at S. in the Bill mentioned, and also his Chest and Boxes there, the same being locked, and did esloin, embezzil, and convey away from this Repliant several Sums of Money, and divers Parcels of Goods, &c. (*pursuing the Substance of the Bill*) as in and by the said Bill of Complaint is most truly alledged, without that that any other Matter, &c. *ut ante.*

Special Replication to the said Answer.

Another Precedent of a Bill and Answer thereunto, and Replication to the said Answer.

A Bill for detaining of Lands, &c. with the Answer and Replication.

HUmbly complaining, &c. your Orator J. S. &c. That whereas one R. S. of H. in the County aforesaid

foresaid, Husbandman and Grandfather of your Orator was in his Life-time seised in his Demesne as of Fee, or in Fee-Tail, of and in certain Messuages, Lands, &c. in, &c. to the yearly Value of, &c. or thereabouts and of the same died seised, by Force whereof the said Messuages, &c. descended and came, as of Right they ought, to one J. S. Father of your said Orator, and Son and Heir to the said R. who afterwards entred into the same, and was for divers Years seised thereof, until on or about (*such a Month and Year*) at which Time one W. G. of H. aforesaid, happening by casual Means to get into his Possession all the Evidences, Deeds and Writings concerning the said Messuages, and knowing your Orator's said Father could not for want of those Evidences, &c. defend his Right and Title to the Messuages, &c. as aforesaid. He the said W. G. entred into the same Messuages, &c. and the same did wrongfully detain during the Term of his natural Life, since which Time one T. G. the Son, and E. G. the Widow of the said W. G. have also entred into the same Messuages, &c. and the same to this Day most unjustly possess and detain from your Orator, together with all the Deeds, Evidences, and Writings aforesaid. All which in Right and Equity belong to your Orator, as Son and Heir to the said J. S. now deceased. In tender Consideration whereof, and for that your Orator doth not know the certain Dates of the said Evidences, &c. as aforesaid, nor any of them, neither doth he know whether they are in a Bag or in a Box sealed, or in a Chest locked. And for that by the Common Laws of this Realm, he is remediless in the Premises, and is only relievable before your Lordship in a Course of Equity. And to the End that the said T. G. and E. G. may by your Lordship's Order be compelled, upon their corporal Oaths, plainly and truly to set forth in their Answers, what Estate they have or claim in or to the Messuages, &c. aforesaid, and also to shew what Right, Title, or Interest they have or claim in or to the same: And may likewise shew the Effect and certain Dates of such Deeds, Evidences, &c. aforesaid, as they or either of them have in their Possession concerning the Tenements aforesaid, or any Part thereof. *May it please your Lordship, &c.*

The

The said Defendants now and at all Times hereafter saving, &c. say, That true it is, that one *R. S.* of, &c. was in his Life-time seised in his Demesne as of Fee, of and in one Messuage and certain Lands and Tenements in *H.* and being so seised by his Deed of Feoffment under his Hand and Seal (*about such a Day and Year*) conveyed the same unto *J. S.* his Son, and to his Heirs and Assigns for ever, as by the said Deed under the Hand and Seal of the said *R.* ready to be produced, &c. By Force of which said Deed the said *J. S.* was thereof seised in his Demesne as of Fee, and being so seised, for a certain Sum of Money to him paid by *W. G.* Father of one of the Defendants, did convey and assure the said Messuage and Lands unto the said *W. G.* and his Heirs, with Warranty (*prout* the Deed.) After which the said *W. G.* died so seised of the said Messuage, &c. after whose Death the Defendants entred into and enjoyed the same Messuage, &c. and received the Rents, Issues and Profits thereof to their own Use, as was lawful for them to do: But these Defendants do deny, That *R. S.* in the Bill mentioned, was seised of the said Messuage and Lands in the Bill mentioned in Fee-Tail, or that the said *J. S.* Father of the Complainant, was so seised thereof at the Time in the Bill, or that the said *W. G.* the Defendant's Father, got Possession thereof, or of the Evidences concerning the same otherwise than was lawful for him to do, or that the Defendants, or any of them, do unjustly withhold or detain the said Messuage, &c. or the Evidences, &c. concerning the same, otherwise than is lawful for them to do in respect of their Right, as aforesaid. And also deny that the said Messuage, &c. with the Evidences concerning the same, do in Right or Equity belong to the Complainant, as Son and Heir to *J. S.* the Father, without that that, &c. *as before.*

The Answer
to the said
Bill.

The said Repliant doth by this his Replication aver and maintain, That all and every the Matters and Things herein contained to be true, &c. in such Sort, &c. as in and by his said Bill of Complaint he hath already set forth; and that the Answer of the said Defendants is for the most Part uncertain, untrue, and insufficient in the Law to be answered unto;

The Replication
to the
said Answer.

never-

nevertheless all Advantages of Exception unto the Insufficiencies thereof now and at all Times hereafter being saved to the said Repliant, he the said Repliant, for Replication thereunto saith, in all and every Things as in and by his said Bill of Complaint he hath already said. And further saith, That he doubteth not well and sufficiently to prove, that the said *J. S.* this Repliant's Father, was on or about the Month and Year (*as in the Bill*) seised in his Demesne as of Fee-Tail, of the aforesaid Messuage, &c. as in the Bill is set forth; and also doubts not to prove all the rest of the Matters and Things in the said Bill of Complaint contained to be true, in such Manner and Form as the same are therein set down and expressed: *Without that* that the aforesaid *R. S.* this Repliant's Grandfather, being seised of the Premises in his Demesne as of Fee, did lawfully, by his Deed of Feoffment under his Hand and Seal, about such a Day, &c. (*as in the Answer*) convey and assure the said Messuage, &c. unto one *J. S.* his Son, and to his Heirs and Assigns for ever; or that the said *J. S.* being of the Premises seised in his Demesne as of Fee, for a certain Sum of Money to him paid by the said *W. G.* the Father of one of the Defendants, did lawfully convey and assure the said Messuage and Lands unto *W. G.* one of the said Defendants, and his Heirs with Warranty, as in the said Answer is very untruly alledged; and *without that*, that the said *W. G.* the Father died of the said Messuage, &c. seised in such Sort as in the said Answer is likewise alledged; or that it was lawful for the said Defendants, after the Death of the said *W. G.* to enter and occupy the said Messuage, &c. as is also in and by the said Answer is untruly alledged, And *without that* that any other Matter, &c. *as before.*

Rejoinder,
what it is.

After Replication, the next Thing to be considered is the Rejoinder, which is the Speech, Allegation, or Plea of the Defendant made to the Plaintiff's Replication, whereby he endeavours to weaken the Plaintiff's Replication, and to strengthen his own Answer. *Vide West. 195.*

And

And therefore the Rejoinder must always pursue Must con-
and confirm the Answer, and sufficiently avoid or firm the An-
traverse every material Point of the Replication. *Ibid.* swer.

Also no new Matter, or unnecessary Allegations No new or
must be put into the Replication: And so much Mat- unnecessary
ter only is necessary to be therein inserted, as will a- Matter.
void the Matter of the Answer.

If upon the Answer there be so much confels'd that Only neces-
the Plaintiff need not draw into Pleading, and prove sary Points
all the Points; he must see to it and reply, and go to to be proved.
Proof only in those Particulars in Question that are
necessary to be proved.

If the Cause is not at Issue by Reason of some new Surrejoin-
Matter disclosed in the Rejoinder, which requires an der. &c.
Answer, there the Plaintiff may surrejoin, and so the when neces-
Defendant may rebut, or ad-surrejoin to the Plain- sary.
tiff's Surrejoinder, if there be Cause; but this is rare- Rebutter.
ly done.

If after the Cause is at Issue, the Complainant re- Commission
fuse to go to Commission, the Defendant may have a *ex parte*.
Commission *ex parte*, to examine his Witnesses, and
need not rejoin.

The Defendant having appeared upon the *Subpæna* Defendant
to rejoin, or after the Return thereof, and Affidavit not to rejoin
of Service, and after the Rule to rejoin is out with- after the
out any Rejoinder put in, he shall not afterwards be Rule is out.
admitted to rejoin: But the Complainant may pro-
ceed to the Examination of Witnesses.

A *Subpæna ad rejuugendum* was taken out against *Subpæna ad*
three Defendants, and only two were served: If the *Rejugend'* a-
Plaintiff proceed to examine Witnesses, the Party not gainst three,
served shall not be concluded by those Examinations, and only two
he being no Party thereunto. served.

When the Defendant doth demur or disclaim to a- Costs where
ny Bill, the Plaintiff cannot reply; and if the Defen- no Rejoinder
dant in those Cases be served with a *Subpæna ad Reju-* is necessary.
gendum, having before made no other Answer but a
Demurrer or Disclaimer, he shall have Costs for
his unjust Vexation.

Where the Plaintiff hath replied, the Defendant may Rejoinder
if he will, rejoin *gratis* to the Replication, and force *gratis*.
the Plaintiff to join in a Commission to examine
Witnesses.

M

Where

Of Replications, Rejoinders,

Time to rejoin on a *Subpæna* served, and Rules given.

Where the Plaintiff intends to go to Commission, he must serve the Defendant with a *Subpæna ad Rejungendum*, before he can have a Commission to examine Witnesses; and upon the Return, and Oath made of the Service thereof, the Plaintiff by entering Rules, as before is shewn, may force the Defendant to rejoin, or join in Commission, or may go on to examine Witnesses without him; for having given him seven Days Time to rejoin, if within that Time he does not, he cannot do it afterward.

Replication to be entred and filed before any *Subpæna ad Rejungendum* shall issue.

No Fruit shall be taken of any *Subpæna ad Rejungendum*, unless there be a Replication first entred with, and filed by the Plaintiff's Six Clerk in the Cause, according to the Course of the Court, before the issuing out of the said *Subpæna*, or at least before the Return thereof: And the Parties upon whom such *Subpæna* shall be served, finding no Replication so filed before the Return thereof, shall have the ordinary Costs taxed, according to the Course of the Court. *Vide Ord. Cha.* 54, 125.

On Costs to be taxed.

And where the Defendant is served with a *Subpæna ad Rejungendum*, and Affidavit thereof made, and does not upon the Plaintiff's Clerk's Demand of the Defendant's Clerk, deliver Commissioners Names by the End of the Term wherein this *Subpæna* is returnable, there the Plaintiff may without Motion or Petition, give Names, and take a Commission *ex parte*. *Vide Cary's Reports*, 111. and *Orders in Chancery*, 124.

The Form of a Rejoinder is thus, viz:

The Rejoinder of C. D. and E. F. Defendants, to the Replication of A. B. Complainant.

Form of a Rejoinder to a Replication.

THE said Defendants now, and at all Times hereafter, saving and reserving to themselves all and all Manner of Benefit and Advantage of Exception to the Incertainty and Insufficiency of the said Replication; they and either of them saith, That the Defendants said Answer is certain, true, and sufficient in the Law to be replied unto; and they also say, as in and by their said Answer they have already said, and do and will aver and maintain all and every

every Thing and Things therein to be true and certain, in such Manner and Form as they and every of them are therein alledged and expressed. *Or thus:* The said Defendant rejoineth, and saith in all and every Thing, as in and by his said Answer he hath already said; and doth and will aver, justify, maintain and prove the same Answer, and all and every Thing and Things, Clauses, Articles, Allegations and Sentences therein, to be good, just, true, certain and sufficient in the Law to be replied unto, in such Sort, Manner and Form, as the same are in the said Answer already set forth and declared. And this Defendant further saith, That the said Replication of the said Complainant is very uncertain, untrue, and insufficient in the Law to be rejoined unto, by this Defendant, for divers Defects and Imperfections therein contained; and that the same is so contrived and made, to the End to give some feigned Colour or Shadow for mainraining the said Bill in this Honourable Court, to the unjust Vexation of this Defendant, as may appear: For that the said Complainant, by the ill Practices, and sinister Designs of one *T. H.* who, as it is reported, promoteth and soliciteth the said Suit for the said Complainant against this Defendant, did, contrary to all Reason, Law, and Conscience, procure this Defendant, being but a poor, ignorant, and illiterate Man, to become bounden by Obligation, in the said Replication mentioned, for the Proceedings in the said Suit of this Defendant; and with such Condition whereof this Defendant is utterly ignorant, the same having never been read to him: Of all which said ill Practices and Designs, this Defendant hopes this Honourable Court will take due Cognizance, and discountenance and punish the same. And *without that*, that any other Matter, Cause or Thing in the said Replication contained, material or effectual in the Law to be rejoined unto by this Defendant, and not herein or hereby well and sufficiently rejoined unto, confessed and avoided, traversed or denied, is true: All which Matters this Defendant is ready to aver and prove, as this Honourable Court shall award; and therefore prayeth, as he before in his said Answer hath already prayed.

Connexion
of the Bill,
Answer, Re-
plication, and
Rejoinder.

Now the better to illustrate the Connexion and Correspondence that the Bill, Answer, Replication and Rejoinder have, as they are dependent upon, and consequential unto each other, I shall here subjoin a Bill, Answer, and Replication; and a Rejoinder thereunto, *viz.*

A Bill found-
ed on a Pro-
mise to for-
bear a Debt
due on Bond,
and yet suing
for the same
within the
Time.

Humbly complaining, &c. That whereas one *R. S.* of &c. was indebted unto one *W. P.* of, &c. in the Sum of, &c. And whereas your Orator, at the special Instance and Request of the said *R. S.* about two Years last past, did become bound for the said *R. S.* unto the said *W. P.* by his Deed or Writing obligatory in the Sum of --- with Condition therein contained for the Payment of the Sum of --- unto the said *W. P.* at the Feast of --- which was in the Year, &c. at or in the *Middle-Temple-Hall, London*, as by the said Deed or Writing obligatory, it doth and may appear: Which said Sum of --- your Orator had got in Readiness, and purposed and intended to pay the same at the Time and Place aforesaid, according to the Condition of the said Writing obligatory. Whereupon the said *W. P.* some few Days, *viz.* about six or seven Days before the Day appointed for the Payment of the said --- came unto your Orator, and upon Speech had between your said Orator, and the said *P.* touching the Payment of the said Money, the said *P.* declared he was contented, and did then agree to forbear the Payment thereof until the Feast of *Easter* then next following; and did also faithfully assume and promise to your Orator, both then and divers Times afterwards, to forbear the Demand thereof, or any Prosecution for the same, until the said Feast-day; and that he would not take any Advantage of the Forfeiture of the said Bond against your said Orator, but would cancel the said Bond, and take a new Bond for the Payment thereof at the Feast of *Easter*, as aforesaid: But never required any new Bond from your said Orator; And your said Orator giving Credit to the Promises and Declarations so made by the said *W. P.* as aforesaid, did not pay the Sum of --- according to the Condition of the said Writing obligatory; after which Time, the said *W. P.* did often-
times

times promise to your Orator to deliver the said Bond to your Orator to be cancelled, and to take a new Bond for Payment of the said Sum of --- at the Feast of *Easter*., according to his said Promises, &c. And your Orator doubting the said *P.* meant to delay him from Time to Time in delivering up of the said Bond, and not fearing lest the said *P.* should take Advantage of the Forfeiture of the said Bond against him, did in *Hillary*-Term last, demand the said Bond again of the said *P.* in *L.* who told your said Orator, That he had delivered over the said Bond unto one *W. W.* being his Brother-in-law, to whom he had assigned over the said Bond, without the Assent of the said *W. W.* but would use his Endeavours with the said *W. W.* for Delivery of the same, and pretended to take divers Journeys to the said *W. W.* to fetch the same; and so from Time to Time delay'd your Orator, and drove him off with fair Words and Pretences, until such Time as your said Orator was upon Occasion of Business inforced to ride out of *L.* into the Country: And shortly after, your said Orator purposing to get the same Bond out of the said *P.* and *W.*'s Hands, did in the same *Hill.* Term, send one *G. U.* his Servant, to *L.* with the said Money, to make Payment thereof unto the said *W.* and *P.* and to receive the said Bond; who coming up to *L.* accordingly, and declaring unto them that he was come to make Payment of the aforesaid Sum of --- and to receive the said Bond, the said *W.* then told the said *U.* that the said Bond was not then in his Custody: But the said *W.* did then promise, That if the said *U.* would deliver over a Bond which he had in his Keeping, in Trust to the Use of the said *P.* that then the said *W.* and *P.* would the next Day come to the said *P.*'s Lodging, and receive the said Sum, &c. and deliver over the said Bond of --- unto him; upon whose Promise, the said *U.* trusting to these fair Speeches, did then presently deliver the said Bond which he had to the Use of the said *P.* to the said *P.* or *W.* accordingly. *But so it is, &c.* That the said *P.* and *W.* nothing regarding their said several Promises, &c. made to and with your said Orator, and the said *U.* as aforesaid, have not only hitherto refused and denied to deliver over the

Of Replications, Rejoinders,

said Bond unto your Orator, according to the Agreements and Promises, &c. as aforesaid: But yet do utterly refuse and deny to do the same, altho' your Orator hath divers Times, both before and since the said Feast of-- offered to make Payment of the said Sum of-- unto the said P. and W. according to the aforesaid Agreement; and yet is ready and willing to pay the same: But also the said P. and W. purposing to charge your Orator with the whole Penalty and Forfeiture of the said Bond, have, or one of them hath of late, contrary to their said Promises and Agreements, and contrary to all Equity and good Conscience, commenced a Suit at Common Law against your said Orator upon the said Bond, to his great Loss and Hindrance: And the said W. P. hath of late utterly denied, that ever he promised to forbear the Payment of--- until the aforesaid Feast of--- contrary to Equity and good Conscience. In tender Consideration whereof, and forasmuch as your Orator is utterly remediless in the Premises by the strict Rules of the Common Law, for that your Orator cannot plead the Promise and Agreement of the said P. made to your Orator for Forbearance of the Money as aforesaid, in Bar of the said Bond at Common Law; nor can have or bring any Action of the Case against the said P. or W. upon their said Promises, &c. for that your Orator cannot make any such sufficient Proof thereof as by the Common Law is in such Case required, for that the same was made privately between themselves, and no Witnesses called thereunto, (or, and for that your Orator's Witnesses which could prove the Premises, or any Part thereof, &c. as before:) *And to the End* that the said W. P. and W. W. may in this Honourable Court, upon their corporal Oaths, true, full and perfect Answer make to all and singular the Premises, as if the same had been herein again repeated and interrogated; and that they may particularly set forth and discover, &c. (the Bond, the Promises, the Agreements, and all the Particulars aforesaid, being to be recited by way of Interrogatory :) And that your Orator may be relieved in all and singular the Premises, may it please your Lordship to grant to your Orator his Majesty's Writ of *Subpœna*, &c.

The

*The Answers of W. P. and W. W. Defendants, to the
Bill of Complaint of E. L. Complainant.*

TH E said Defendants saving and reserving to themselves all Benefit and Advantage of Exception to the manifold Incertainties, Insufficiencies and Imperfections of the Complainant's said Bill of Complaint, for Answer thereunto, or unto so much thereof as these Defendants are advised is material or necessary for them, or either of them to make Answer unto, they and either of them answer, and say, and first the said *W. P.* saith, That true it is, that the said Complainant did become bound to these Defendants by his Obligation in the Sum of --- with Condition endorsed for the true Payment of the said Sum, at a Day long since past, the which Sum this Defendant did verily think to have received accordingly, and for that Cause, did at the Day appointed, repair unto the Place specified in the Condition of the said Obligation where the Money should have been paid, and there did attend in Expectation to have received the same accordingly; but the said Plaintiff not intending to satisfy the said Debt, left the same unpaid, to the great Hindrance, Loss and Discredit of this Defendant. And this Defendant further saith, That he hath often and sundry Time since the said Money became due, made Application to, and desired the Complainant to pay and satisfy the said Debt, who from Time to Time with fair Promises, hath for almost these three Years past delayed this Defendant, to a greater Prejudice than the said Sum amounted unto, by Reason whereof, and forasmuch as the Complainant hath sought divers indirect Ways and Means to get the said Obligation of --- out of the Hands of this Defendant, with Intent never to pay the Debt aforesaid, or any Part thereof, this Defendant hath caused the said Obligation to be put in Suit, as is lawful for him to do, and this Defendant doth deny that the Complainant, to the Knowledge of this Defendant, did prepare in a Readiness to have paid the said, &c. at the Time and Place, according to the Condition of the said Obligation, or that this Defendant some few Days before the

The Answer
to the Bill.

Day of Payment, or indeed at any Time else, did come to the Complainant, or had any Speech with him, or did declare, That he was contented, and did agree to forbear the Payment thereof until the said Feast of --- then next following, or did assume and promise to, and with the Complainant, both then and at divers Times after, to forbear the Payment thereof until the said Feast, and would not take any Advantage of the Forfeiture of the said Bond, but would cancel the same, and take a new Bond for Payment thereof, as in the said Bill is most untruly alledged; and this Defendant doth deny that the said Complainant, to the Knowledge of this Defendant, did send one G. U. his Servant to *London*, with the said Money, to make Payment thereof to one of these Defendants, as in the said Bill is alledged; for this Defendant saith, That he sought often to the Complainant, and made Application to him, that he, this Defendant, might be paid his said Debt either in Money or some other Way, who made this Defendant many Promises to do the same with Speed, but never meant or intended it, for any Thing this Defendant could find or observe. And the said W. W. the other of these Defendants, for himself saith, That whereas he is charged to have promised the said U. That if he would deliver a Bond which he had in his keeping, in Trust to the Use of the said P. that then he, this Defendant, and the said P. would the next Day following, come to the said U's Lodging, and receive the Sum of ---- and deliver over the said Bond of --- he, this Defendant, saith, That he never made any such Promise to the said U. to his Remembrance, neither was there any Cause at all so to do, as well because in Truth, the said U. ought to make Delivery of the said Bond, so committed to him in Trust, as appears by the Plaintiff's own shewing, as also for that this Defendant was informed that the said U. had delivered the said Bond before that they two met together to talk of the said Debt, and this Defendant further saith, That altho' it were true that he had made such Promise, as aforesaid, yet it were nothing at all material for Relief of the Complainant, as well for the Cause aforesaid, as also for that this Defendant had of himself no Power to do either Good or Hurt in the

the Matter. And without that that any other Matter, &c. (as in the Answers, *ante*.)

The Replication of E. L. Esquire Complainant, to the Answer of W. P. and W. W. Defendants.

THE said Repliant saving and reserving to himself all Benefit, &c. for Replication thereunto
 saith, That he doth and will aver, justifie, maintain, and prove all and every the Matters, Articles, Sentences, and Things in the said Bill of Complaint contained, to be good, just, and true, in such Manner and Form as in the said Bill of Complaint they are already set forth and declared; and further saith, That he doth and will aver and prove, as this Honourable Court shall award, That the said Complainant did prepare in a Readiness, and purposed to pay the aforesaid Sum of --- in the said Bill and Answer mentioned, at the Time and Place in the Condition of the said Obligation, according to the true Intent and Meaning of the Condition of the said Obligation, in such Sort, Manner and Form, as in the said Bill is alledged, and that some few Days before the Payment thereof, the said W. P. one of the Defendants, did come to the said Complainant, and upon Speech had between them touching the Payment of the said Money, the said Defendant was contented, and did agree to forbear Payment thereof until the Feast of, &c. then next following, in such Manner, &c. as in the said Bill is alledged, and the said W. P. did faithfully assume and promise to and with the said Complainant, both then, and at sundry Times after, to forbear the Payment thereof until the Feast of, &c. aforesaid, and would not take any Advantage of the Forfeiture of the said Bond against the said Complainant, but would cancel the said Bond, and take a new Bond for Payment thereof at the Feast aforesaid, and that the said Complainant relying upon such Agreement and Promise of the said P. for forbearing of the said Sum, &c. until the said Feast, &c. and for the taking of a new Bond for Payment thereof at the Feast aforesaid, did not pay the same according to the Condition of the aforesaid Obligation, which otherwise he would have

The Replication.

Of Replications, Rejoinders,

have done in such Sort, Manner and Form as in the said Bill of Complaint is set forth and declared ; and also saith, That this Repliant in *Hilary-Term* last, sent the said *G. U.* his Servant to *L.* with the Money to make Payment thereof, and that the said *W. W.* the other Defendant, upon Offer of Tender of the aforesaid Sum by the said *U.* the said *W. W.* did promise to deliver the said Bond unto the said *U.* within a short Time after, so as the said *U.* would deliver over a Bond which he had in his keeping, to the Use of the said *P.* and would also at a Time between them agreed on, make Payment of the said Sum of, &c. which Bond was delivered over accordingly to said *P.* or *W.* by the said *U.* and the said *U.* was ready to tender and pay the said Money according to the said Appointment, as in the said Bill is truly alledged; but this Repliant denies, That the said *W. P.* one of the said Defendants, sought often to this Repliant, or requested him to have the said Debt either satisfied in Money, or some other Way, or that this Repliant thereupon made him many fair Promises to do the same, but never meant or intended it in such Manner and Form as in the said Bill is alledged : For this Repliant says, That he did often, and at sundry Times before the said Feasts, and divers Times since, offer to make Payment of the said Sum, &c. unto the said *W. P.* and *W.* and always was, and yet is ready and willing, upon Delivery of the aforesaid Bond, to pay the same, in such sort as in the said Bill is alledged.

And without that, that any other Matter, Cause, or Thing, &c.

The Joint and several Rejoinder of W. P. and W. W. Defendants, to the Replication of E. L. Complainant.

A joint and several Rejoinder to the said Replication.

THE said Defendants jointly say, and each of them for himself severally saith, That the Replication of the said Complainant is an unjust and untrue, and very insufficient in the Law, to be by these Defendants, or either of them, rejoined unto, nevertheless, all Advantages of Exception to the Incertainty and Insufficiency thereof to these Defendants, and to either of them, at all Times hereafter being saved,

saved, for Rejoinder unto the said Replication, these Defendants, and either of them for himself severally saith, in all and every Matter and Thing as they and either of them in their joint or several Answers have said, without that, That any other Matter, Cause, or Thing, &c. *ut ante*.

After the Defendant's Rejoinder, there may be a Surrejoinder on the Behalf of the Plaintiff; for if the Cause be not at Issue by Reason of some new Matter disclosed in the Rejoinder that requires an Answer, the Plaintiff may surrejoin thereunto.

So that a Surrejoinder is a second Defence of the Complainant's Suit or Bill, and is made in Answer or Opposition to the Defendant's Rejoinder, and it is used only, when by Reason of some new Matter disclosed in the Rejoinder, the Parties cannot come to Issue without an Answer thereunto.

And thereunto the Defendant may put in a Rebutter or Ad-surrejoinder, if there be Cause for it, which is no more than an Answer to the Plaintiff's Surrejoinder.

But seeing a Cause seldom or never proceeds so far as a Surrejoinder, &c. I shall not trouble my Reader with Precedents of that kind, but proceed to treat of Pleas and Demurrers. And first of Demurrers to Replications, with which I shall conclude this Chapter.

The Demurrer of W. D. and E. his Wife, two of the Defendants, to the Replication of T. B. Complainant.

THE said Defendants say they are advised, That the Replication of the said Complainant is insufficient to be rejoined unto; for that the Scope of the Bill is to be relieved against these Defendants upon supposed Articles of Agreement alledged by the said Bill to have been made between the said Complainant and these Defendants; whereby these Defendants for 1100*l.* agreed to convey the Manor, Lands and Tenements in the Bill mentioned, and all their Estate therein to the Repliant, the Bill suggesting, that these Defendants were entitled in the Right of the Defendant E. as one of the Sisters and Coheirs of W. D.

Surrejoinder,

*What it is.
When necessary.*

*Rebutter,
what it is.*

A Demurrer to a Replication, because it is a Departure from the Bill.

Of Replications, Rejoinders,

W.D. her late Brother deceased, and that the Plaintiffs were entitled by Vertue of a Settlement. And by the Replication the Plaintiff alledgeth, That some other Person, to the Use of these Defendants or the Plaintiff, or by their Consent, was or were in the Possession of the said Manor and Premises, and took the Rents thereof by the Space of one whole Year next before the making of the said Articles, which is another Title than that which the Plaintiff hath charged and set forth in his Bill; for the Plaintiff doth not pretend any Possession in himself, or any under whom he claims, nor in these Defendants by the said Bill. And therefore the said Replication is a Deprtture from the Bill, and by Consequence is insufficient to be rejoined unto; And therefore these Defendants do demurr thereunto, and humbly demand the Judgment of this Honourable Court thereupon, and pray to be dismissed with their Costs.

The Rejoinder of J. E. Widow, Defendant, to Part, and her Demurrer, to the Residue of the Replication of T. E. Complainant.

A Rejoinder to Part, and a Demurrer to other Part of a Replication, for that it contains Matter that is foreign to the Matters contained in the Bill.

THE said Defendant saving, &c. For Rejoinder unto so much thereof as is not herein after demurred unto, this Defendant saith in all and every other Matter and Thing as she in and by her said Answer hath already said, and doth and will aver, justifie, maintain and prove the same Answer, and all and every the Clauses and Things therein contained, to be true, certain, and sufficient in the Law to be replied unto, in such Manner and Form as the same therein is set forth and declared; and as to so much of the said Replication as concerneth or alledgeth any Agreement to have been made between the Complainant and this Defendant since this Defendant's late Husband's Death, or any Declaration made by this Defendant, this Defendant doth demur in Law thereunto: For that the Matter is foreign to the Matters and Allegations of the Bill; for the Bill is grounded purely and only as to so much as concerns the Defendant's Right of Dower upon a supposed Agreement alledged in the Bill, to be made between the Friends of

of this Defendant and her late Husband on their Inter-marriage, without so much as one Word or Mention of the Agreement charged in the Replication, to have been made by this Defendant and the Complainant since her said Husband's Death, so that the pretended Agreement mentioned in the Replication, is foreign to the Agreement charged in the Bill, and therefore, and inasmuch as the said pretended Agreement mentioned in the Replication was, for ought appears, precedent to the Complainant's Bill; and therefore in Case the said Complainant would have any Avail or Benefit thereby, it ought to have been made Part of the Bill, that so this Defendant might by Answer upon Oath have made her Defence entire thereunto, and might have set forth any Matter that she could in Avoidance thereof upon Oath, as that the said Agreement pretended by the Replication was but a Part of the Agreement that was really made between the Plaintiff and this Defendant, and not the whole Agreement, or that the same was waived afterwards, or other Matters she might have set forth by her said Answer, that might with the Testimony of one Witness be a full Defence to that Matter; whereas in Case this Defendant should be put to rejoin to that Matter, she might be deprived of that Defence which she is advised she ought to have in Justice; and which by the Course of Equity ought to be allowed her. And therefore she doth demur to that Part of the Replication, and humbly demands the Judgment of this Honourable Court, Whether the Complainant ought to be permitted in this Manner to draw that Matter under Examination, and humbly prays, as in and by her Answer she hath already prayed.

C H A P. VIII.

Of Pleas and Demurrers, and some further Observations touching Answers.

Method of
this Chapter.

IN the ensuing Chapter we shall observe this Method, *viz.* First, we shall treat of *Pleas* and *Demurrers* jointly, and then of each of them separately; and in the Conclusion add some further Observations touching Answers, which could not conveniently be introduced in the foregoing Chapters.

Pleas, &c
precede An-
swers.

As to *Pleas* and *Demurrers* jointly: It has been before observed, That *Pleas* and *Demurrers*, according to the Method of Proceedings, ought to precede the Title of Answers: For after a *Plea* or a *Demurrer* over-ruled, the Defendant may be admitted to answer the Plaintiff's Bill.

Difference
inter Pleas
and Demur-
rers.

But herein *Pleas* and *Demurrers* differ, *viz.* a *Plea* can be only put in upon the Bill of Complaint, but a *Demurrer* may arise upon any Part of the Pleadings. But it is generally held, That a *Demurrer* to an Answer is ill. *Sed vide 2 Chan. Cases. 8. contra.*

Demurrer or
Plea to a Bill.

By the *Orders in Chanc.* p. 117, 118, 119. it is ordered, *viz.* Forasmuch as the Defendant being served with Process to answer, may by Advice of Counsel, upon Sight of the Bill only, be enabled to demur thereunto, if there be Cause; or may by like Advice be enabled to put in any just *Plea* which he hath in Disability of the Person of the Plaintiff, or to the Jurisdiction of the Court: It is therefore ordered, That such *Demurrer*, or such *Plea* in Disability, or to the Jurisdiction of the Court, under the Hand of Counsel learned, shall be received and filed, altho' the Defendant do not deliver the same in Person, or by Commission.

Demurrer or
Plea in Disa-
bility, or to
the Jurisdic-
tion of the
Court.

And therefore if the Defendant shall pray a Commission, and thereby return a *Demurrer* only, or only such a *Plea*, which shall be afterwards over-ruled, the Defendant shall pay five Marks Costs: And altho' it be allowed, the Defendant shall have no Costs in respect

respect of the Plaintiff's needless Trouble occasioned by such Commission.

Every Demurrer shall express the several Causes of Demurrer, and shall be determined in open Court. And such Pleas also as are grounded upon the Substance and Body of the Matter, or extend to the Jurisdiction of the Court, shall be determined in open Court. And for that Purpose, the Defendant is to enter the same with the Register within eight Days after the filing thereof; or in Default of such Entry made, the same shall be disallowed of Course, as put in for Delay. And the Plaintiff may then take out Process to enforce the Defendant to make a better Answer, and pay forty Shillings Costs; and the same shall not afterwards be admitted to be set down or debated, unless upon Motion it shall be ordered by the Court: And if any Cause of Demurrer shall arise, and be insisted on at the Debate of the Demurrer (more than is particularly alledged) yet the Defendant shall pay the ordinary Costs of over-ruling a Demurrer (which is hereby ordered to be five Marks Costs) if those Causes which are particularly alledged, be disallowed; although the Bill in respect of that Particular so newly alledged, shall be dismissed by the Court.

Every Demurrer to express the Causes of Demurrer.

To be entered with the Register within eight Days of the filing.

If a Cause of Demurrer shall arise sufficient to dismiss the Bill, Costs to be paid.

A Plea of Outlawry, if it be in any Suit for any Duty, touching which Relief is sought by the Bill, is insufficient according to the Rule of Law, and shall be disallowed of Course, as put in for Delay: And the Plaintiff may notwithstanding such Plea, take out Process to enforce the Defendant to make a better Answer, and pay five Marks Costs; otherwise a Plea of Outlawry is always a good Plea, so long as the Outlawry remaineth in Force: And therefore the Defendant shall not be put to set it down with the Register: And after the said Outlawry reversed, the Defendant, upon a new *Subpœna* served on him, and Payment unto him of twenty Shillings Costs, shall answer the same Bill, as if such Outlawry had not been: But if the Plaintiff conceive such Plea of Outlawry through Mispleading, or otherwise, to be insufficient, he may, upon Notice given to the Clerk of the other Side, set it down with the Register, to be debated with

Plea of Outlawry, when good or not.

Costs.

Outlawry reversed.

Answer.

with the rest of the Pleas and Demurrers in Course : But if the Plaintiff shall not in such Case enter it with the Register within eight Days after the same shall be filed, the Defendant may take out Process against the Plaintiff for his ordinary Costs of five Marks, as if the same had been heard. *Ord. Chanc.* 119, 120.

Plea of a former Suit depending for the same Matter.

The Dependency of a former Suit for the same Matter, is also a good Plea; and therefore the Defendant shall not be put to set it down with the Register : But if the Plaintiff be not satisfied therewith, the same shall be referred to one of the Masters of the Court to certify the Truth thereof; and if it shall be determined against the Plaintiff, he shall pay five Pounds Costs to the Defendant; but such Reference shall be procured by the Plaintiff, and a Report thereupon within one Month after the filing of such Plea, otherwise the Bill to stand disinis'd of Course, with the ordinary Costs of seven Nobles. *Ord. Chanc.* 121.

That a former Suit is depending at Law.

If after a Suit commenced at the Common Law, or any other inferiour Court, a Bill shall be exhibited in this Court to be relieved for the same Matter, the Dependency of the former Suit shall be admitted as a good Plea, and the Defendant not to be put to Motions for an Election, or Dismission, and that Plea shall be proceeded in, as in Case of a Plea of a former Suit depending in this Court for the same Matter. *Ord. Chanc.* 121.

Where no Commission to answer shall be made, nor Plea or Demurrer, but upon Motion. Pleas and Demurrers, how to be entered.

A Plea over-ruled, and three insufficient Answers.

After a Contempt duly prosecuted to an Attachment with Proclamation returned, no Commission to answer shall be made; nor Plea or Demurrer admitted, but upon Motion in Court, and *Affidavit* made of the Party's Inability to travel, or other good Matter to satisfy the Court touching that Delay. *Ord. Chanc.* 121.

By Order 29 *Julii primo Gul. & Mrr.* 1689. All Clerks are to enter their Pleas and Demurrers within eight Days after filing; but the same are not to be entered without a Certificate first had of the Filing of the Bill, Plea, Demurrer. *Ordines Chanc.* 232.

A Plea was to Part, and a Demurrer to Part; the Plea was over-ruled; then the Defendant answered, and that being reported insufficient, he put in another Answer;

Answer; and that being also insufficient, he put in a Fourth Answer, if the first be accounted one; and yet the Lord Chancellor did not commit him to be examined on Interrogatories. 1 Chan. Cases 297. *Clothworthy versus Mellish.*

As no Demurrer, so no Plea is to be set down for hearing on any certain day, except the Order be brought to the Register to enter two days at least before. And after the Paper of Pleas and Demurrers to be argued, is made out, and set up in the Register's Office, no Addition or Alteration is to be made in it. *Ord. Chanc. 62.*

And as the Register shall not enter any Plea, so neither shall he enter any Demurrer in the Paper at the Instance of any Person upon a Warrant for setting down the same on a certain day, unless the Suitor shall bring such Order or Warrant to the Register to be entered two days before the day appointed for hearing. *ibid.*

As a Plea, so a Demurrer may be brought on either in common Course, or by Order on Motion or Petition: But they are all to be determined in open Court.

Note, A Plea may be to one Part of the Bill, and a Demurrer to another Part thereof, and an Answer to the Residue; as in the following Precedent, *viz.*

The joint and several Pleas, Demurrers, and Answers of T. P. Gent. S. D. Spinster, E. C. Widow, G. P. J. C. &c. Defendants to the Bill of Complaint of H. D.

THE said Defendants by Protestation not confessing or acknowledging all or any of the Matters and things in the Complainant's said Bill of Complaint contained, to be true, in such Manner and Form as the same are therein set forth and charged against these Defendants, these Defendants for Plea to so much of the said Bill as is to compel these Defendants to set forth and discover their respective Titles in and to the Manors, Lands, Tenements and Hereditaments in the Bill of Complaint mentioned, or Lands, &c. to another, who defended an Ejectment brought by one of the Defendants to the said Lands.

Q. if to be examined on Interrogatories.

Setting down Pleas or Demurrers for hearing.

Not to be entered at the Parties Instance.

May be brought on by Motion or Petition. Plea to Part, and Demurrer to Part, and Answer to the Residue.

1st. The Defendants to that Part of the Bill, which is to discover their Titles, *plead in Bar,* That the Plaintiff had conveyed the

any

any part thereof: They say, That the said Complainant hath several Times within these Twelve Months last past affirmed to the Defendant *T. P.* and to several other Persons as the said Defendants *S. D. E. C. G. P. J. C. &c.* have been informed, and the said *T. P.* doth now affirm, That he the said Complainant hath sold and conveyed away unto *J. E.* of *Grays-Inn* in the County of *Middlesex*, Esq; all his Estate, Title, Interest or Claim of, in or to the said Manors, Lands, Tenements and Hereditaments in his now Bill of Complaint mentioned. And the said *J. F.* hath now also within the said Time very often affirmed to the said *T. P.* and several other Persons, That he had bought in, and purchased of the now Complainant all his Estate, Interest, Title or Claim in or to the said Manor, Lands and Premises now in Variance. And thereupon this Defendant *T. P.* on behalf of himself and the other Defendant *S. D.* did fall into a Treaty with the said *J. F.* and the said *T. P.* and several of their Friends; and the said Complainant did know of the said Reference, and did give Encouragement to the said *T. P.* to treat and agree with the said *J. F.* and did then also affirm, That he had nothing to do with, or laid any Claim to the said Manor and Lands: and the said *J. F.* in an Action of Trespass and Ejectment brought by this Defendant *R. T.* upon the supposed Demise of the Defendants *J. C.* and *C. T.* which was tried the last Assizes at *W.* did take upon him the Defence of the said Action, and did defend the same at the said Trial accordingly. All which these Defendants do aver, and are ready to prove the same as this Honourable Court shall award; by Reason whereof these Defendants are advised, That the Complainant having no Interest or Title of, in or to the said Manor, Lands and Premises, but having transferred the same unto the said *J. F.* as aforesaid, they, nor any of them, are obliged or compellable by the Rules and Practice of this Honourable Court either to discover, or set forth the Particulars of their or any of their Conveyances, or Assurances, or the Nature of them, or the Manner, of the Executions of them, or to set forth their or any of their Interest or Title of, in or to the said Manors, &c. or any Part thereof, and therefore pray the Judgment of this Honourable Court

Court whether they shall make any further or other Answer to the said Bill of Complaint in this Particular. And these Defendants further say, That by the Complainant's own shewing in and by his said Bill of Complaint he was an Infant under the Age of 21 Years at the Time of his entring into the said Articles of Agreement in the Bill of Complaint mentioned, with the said Defendant T. P. and if so, the same is voidable in Law, and ought not to be any ways binding or obliging to the Complainant or his Heirs. And therefore, and for divers other apparent Defects and Imperfections in the said Bill of Complaint contained, these Defendants do demur in Law, and humbly demand the Judgment of this Honourable Court, whether they or any of them shall be compellable to make any further or other Answer in any Particular touching his Infancy, or any otherwise than as herein after followeth. And for Answer to such Part of the said Bill of Complaint as is not pleaded or demurred unto, these Defendants say, and all of them for and by themselves severally deny all and all Manner of undue Practice, Confederacy or Combination whatsoever one with another, or to or with any other Person or Persons whatsoever to defeat, defraud or circumvent the said Complainant, as in the said Bill is scandalously pretended, or to any other End, Intent or Purpose whatsoever. And all these Defendants for themselves severally deny that they or any of them have or hath, or ever had the said pretended Deeds of Settlement or Intail in the Bill mentioned, or any or either of them, or any other Deeds, Writings or Evidences whatsoever touching or concerning the said *Manor, Lands and Premises in the Bill mentioned*, or any Part thereof, which do any ways tend to the making out, or Proof of any Title or Interest of or for the Complainant, in and to the same or any Part thereof. Nor do these Defendants or any of them claim any Interest or Title in or to the said Manor, &c. or any Part thereof by, from or under the Complainant. Nor did these Defendants, or any of them by, from or under any Title derived from the said Complainant, prosecute any Action of Trespass and Ejectment brought in the Name of the said Defendant R. T. as Lessee, or supposed Lessee of the said

2d. *Demurrer* to another Part, for that by the Plaintiff's own shewing he was under Age at the Time of the Articles of Agreement, and therefore the same are void in Law, and cannot bind the Complainant or his Heirs.
3d. *Answer*, as to the Residue of the Bill.

Of Pleas distinctly:

Bill exhibited in the Name of another.

J. C. and *C. T.* which was tried at the last Assizes at *W.* wherein the now Complainant did not enter into any Rule to defend the same, although he knew thereof, as these Defendants *T. P.* and *S. D.* hope to prove to this Honourable Court. But the said *Mr. F.* took upon him the Defence of the said Action, and produced Witnesses and several Deeds and Evidences at the said Trial. And after Evidence given on both Sides, a Verdict therein passed for the said Defendant *R. T.* then Plaintiff in the said Action, for Part of the said Manor and Lands now in Variance: But these Defendants have as yet no Benefit of the said Verdict, but Execution thereof is staid by the Injunction of this Honourable Court obtained by the said *J. F.* in another Cause wherein he is Plaintiff against these Defendants and others. And these Defendants *T. P.* and *S. D.* say, That they hope to prove to this Honourable Court, that the Bill of Complaint exhibited against the now Complainant is exhibited, and this Suit prosecuted, by and at the Charge of the said *J. F.* and not by the Complainant; and that the said Complainant hath so acknowledged, and that the said *J. F.* hath unnecessarily and causelessly exhibited this Bill in the now Complainant's Name on purpose (as these Defendants believe) to vex and trouble these Defendants, and to put them to unnecessary Charges in the Law, of which these Defendants hope this Court will take due Consideration, and consider the same in Costs to these Defendants: *Without that, that, &c. the usual concluding Traverse.*

Of Pleas distinctly.

The foregoing Rules and Precedent will be sufficient to shew the Nature and Form of a *Plea*, *Demurrer* and *Answer* jointly as they are included in one and the same Defence made by several Defendants; and therefore I shall proceed to consider of *Pleas*, as distinct and separate from *Demurrers* or *Answers*.

A Plea defined.

A *Plea* is a special Answer to a Bill, or some Part thereof, shewing and relying upon one or more Things as a Cause why the Suit should be either dismissed, delayed or barred.

Three Sorts of Pleas.

And Pleas in this Court are of three Kinds or Sorts, viz. 1st. A Plea to the Jurisdiction. 2^d. A Plea to the Person. 3^{dly}. A Plea in Bar.

Pleas to the Jurisdiction, or in Disability of the Person, need not be upon Oath; so that they be under Counsel's Hand, they shall be received and filed, tho' the Defendant doth not deliver the same in Person, or by Commission. *Ord. Chan. 117.* The former not on Oath, &c.

So Pleas of any Matter of Record, or of Matters recorded in this Court, need not be upon Oath. *Ord. Chan. 13.* So Matter of Record.

But Pleas in Bar of Matters *in Pais*, are to be upon Oath, and except the Matter of the Bar be single, and so full a Bar as that the Bill requires no further Answer, the whole Matter is generally set forth by way of Answer: And then so much of it as goes in Bar, is relied upon by way of Plea; and this is entituled, *The Plea and Answer of the Defendant*: Or the Defendant may plead the Matter proper in Bar; and then add, by way of Answer, what further is necessary, as to *Fraud*, &c. charged in the Bill. *2 Chan. Cases 161.* *Contra*, if in Bar, &c.

An Answer and Plea taken by Commission was returned, *Ista Respons. capta fuit per Sacramentum*, &c. So that the Plea not appearing to be upon Oath, it was rejected, but without Costs, the Court apprehending it to be rather the Mistake of the Commissioners, than the Fault of the Defendant. *2 Chan. Cases, 208.* Plea taken by Commission return'd as an Answer.

After an Attachment, with Proclamation returned, no Commission to answer is to be made, nor Demurrer to be admitted, but upon Motion in open Court. *Ord. Chan. 121.* Motion for Commission to answer, or for a Demurrer after Attachment, &c.

Nor in such Case is any Plea to be admitted but upon like Motion.

In the first kind of Pleas, *viz.* to the Jurisdiction, is to be shewn, That the Court has not Jurisdiction of the Cause; as, if Lands lie in a County Palatine, or in an Exempt Franchise, you may plead it, and that time immemorial, &c. (or as the Case is) all Suits at Common Law and in Equity, touching the same, have or ought to have been impleaded, and yet are impleadable in the Courts of the said County Palatine, &c. before the Chancellor, &c. there, and not elsewhere. *1. Pleas to the Jurisdiction, how pleaded.*

Inter Edgworth against Davies, 14 Car. 2. The Bill was to have an Account of the Profits of Land which the Defendant had received in Trust for the Plaintiff during his Minority, and for Monies received upon Bonds, and for Writings, &c. The Defendant pleaded, *Prescription.* The Jurisdiction of the Dutchy over-ruled without Costs.

Of Pleas to the Jurisdiction.

That the Defendant lived in *Cheshire*, and that the Lands lay in the Counties Palatine of *Cheshire* and *Lancashire*, and therefore not within the Jurisdiction of this Court. This Plea having been formerly argued before Judges in Absence of the Chancellor, they ordered Precedents to be produced, which were as follows: *Hern* against *Smith*, 12 *Eliz.* for that the Lands lay within the Dutchy, was over-rul'd. *Sherborn* against *Vaughan*, 13 *May* 14 *Car.* The Bill was to be relieved on a Trust: The Defendant pleaded the Jurisdiction of the Dutchy; this was allow'd *ex parte*. But in the Lord *Coventry's* time, *Hales* and *Daniel*, 24 *Oct.* *Car.* 1. *ad Idem*: In which Case, the Thing being for a Personal Estate, the Court over-ruled the Plea of the County Palatine: And in the same Case Mr. *Page*, to whom it was referred to certify, reported upon the View of Precedents, [That the Jurisdiction of the Counties Palatine, was allowable between Parties dwelling in the same County, and for Lands there, and for Matters local:] And in the Argument of the principal Case, was cited the Case of Sir *John Egerton* and the Earl of *Derby*; and upon long Debate in the principal Case, the Plea was over-ruled, but without Costs. 1 *Chan. Cas.* 40, 41.

Plea over-ruled.

Jurisdiction of *Lancaster* allowed *quoad* &c.

Jurisdiction of the Dutchy over-ruled.

Privileges for the County Palatine of *Chester*, over-ruled.

See 1 *Chanc. Rep.* 278. where the Jurisdiction of the County Palatine of *Lancaster* was pleaded, and the Plea ruled good, as to the Title and Possession of the Lands and Profits. 19 *Car.* 2. *Gerrard contra Stanley & al.*

Vide 1 *Chanc. Rep.* 54. That Dutchy Lands granted from the Crown, may be debated in *Chancery*; and an Injunction granted to the Dutchy Court. And whereas the Defendants had pleaded the Jurisdiction of the Dutchy Court, and would not answer in this Court, his Lordship over-ruled them all as to the Point of the Jurisdiction of the Dutchy. *Id.* 55. 7 *Car.* 1.

About *Mich.* or *Hill.* 5 *Car.* Privilege of the County Palatine of *Chester* was over-ruled; 9 *Car.* 2. *Inter Barnard and Langley.* 22 & 23 *Eliz.* *Croker contra Holme*, dismissed. *Pas.* 2. *Car.* *Pope contra Tharcher*, 25 *Eliz.* *Dom. Morley cont. Martin.* 26 *Eliz.* *Nevill cont. Nevill.* 24 *Eliz.* *Brereton contra Donne.*

11 *Eliz.* *Egerton contra Dominum Derby*, determined here, yet decreed there: Yet in 27 *Hen.* 8. *Swinerton contra*

contra Savage, it was ordered, in respect the Suit depended there, that the Cause should be determined there.

The Defendant pleaded the Privilege of the Court of *Exchequer*, and that they ought not in respect thereof to be drawn to answer the Plaintiff's Bill in this Court, altho' the constant Precedents of this Court were to the contrary: And the Defendants being ordered to shew Cause why the Plea should not be over-ruled, they produced a Precedent in 16 or 17 *Elia. Nori contra Hutton*; and the Lord Keeper declared, He had heretofore seen that Precedent, but had also seen very many Precedents in this Court to the contrary; and however it were in Point of Precedent, yet for that, neither by Law nor any Precedent, any more than only one Plea is to be admitted to the Jurisdiction of the Court; therefore in this Case the Plea being insufficiently pleaded, the Defendant ought to answer, and ordered the Defendant to make a direct Answer to the Plaintiff's Bill in this Court. 1 *Chanc. Rep.* 69, 70.

It is said this Court declared, That the Privilege of the University of *Cambridge* ought to be maintained, and not to be infringed by this Court. 10 *Car. Byat contra Pickering*, 1 *Chan. Rep.* 86.

Prat against *Taylor*, 1 *Chan. Cas.* 327. The Bill was to have an Account of several Sums of Money, which the Defendant, a Fellow of *Exeter-College* in *Oxford*, Tutor to the Plaintiff's Son, received towards the necessary Occasions of her Son. The Chancellor of *Oxford*, by Instrument in Writing, set forth the Privilege of the University Charters and Confirmation, &c. by Act of Parliament; and the Defendant's being a Scholar and Resident, and that they had a Court of Equity, and prayed that *Taylor* might be dismissed. The Lord Keeper did not allow the Claim, and said, That Cognizance of Pleas in Equity could not be granted, tho' Precedents were shewn of the same Claim allowed in time of *Q. Elizabeth*. He ask'd, if any could be shewn in the Lord *Elsemere* or *Coventry*'s time, but none could be shewn; and thereupon disallowed the Claim, saying it must be put in by way of Plea: But withal declared, it should not be on Oath; but it should be sufficient to aver the Defendant a Scholar, Resident, &c. without Oath; and so he said it should be in case

Pleas of Privilege in the Exchequer to draw a Cause from this Court, over-ruled.

Privilege of Cambridge.

A Scholar of the University of *Oxford* sued: The Chancellor puts in his Claim of Privilege by Writing, disallowed.

Land lying in
the Cinque
Ports.

Court of
Chancery in
the Cinque
Ports.

It's Use.

Stannary
Court.

Privilege of
the Univer-
sity.

Jurisdiction
of the Exche-
quer, gain'd
by Priority.

Plea of an
Account sta-
red, over-
ruled.

Where a Plea
in Chancery
is false and
fraudulent.

One Plea on-
ly to the Ju-
risdiction.

Pleas to be
determin'd in
open Court.

of Outlawry pleaded ; the Defendant should not be put to aver the Plea on Oath, but without Oath.

In 1 & 2 P. & M. *Inter Beare and Stockball*, the Matter remitted to be tried at *Oxford*; and so in the Case of *Davis contra Corpus-Christi College*, *Mich. 19 Jac. 1.*

40 *Eliz. Langham contra Beachamp*: The Defendant committed because he would not answer, the Land lying in the Cinque-Ports.

Note, It is said, there is a Court of *Chancery* in the Cinque Ports, but that no Original Writ issues thence ; but it serves only to decide Matters of Equity ; *Mich. 15 Car. 2. 1 Sid. 166. per Cur'*. Yet 1 *Sid. 356.* it's said, The great Use of their *Chancery* is to relieve against Errors in Proceedings at Law, which they use to indorse upon the Bill.

Stannary Court privileged ; *Daw contra Derry, Trin. 23 Eliz. Trewynard contra Killigrew, 4 & 5 Eliz.*

In a Plea of the Privilege of the University of *Oxford*, the Privilege must be pleaded under Seal of the University. 2 *Chanc. Rep. 104.*

'Tis said, If a Bill be brought in the *Exchequer* touching Tithes, or other Matter, and the Defendant exhibits his Bill here against the Complainant touching the same Matter, the Court of *Exchequer* has gain'd Jurisdiction by Priority of Suit ; and it may be pleaded in Abatement of the Bill here.

Plea of an Account stated, over-ruled, though the Defendant but an Executor, and the Account stated by the Testator : But with this, that the Plaintiff proceed no farther than Answer, without Leave of the Court : 1 *Chan. Cas. Trin. 27 Car. 2. Wright against Coxon.*

Where a Plea in *Chancery* is false and fraudulent, the Plaintiff there shall have the same Advantage as if the same Plea were found false by Verdict at Law ; and shall have all the same Consequents there, as follows on a false Plea at Law, to all Intents. 2 *Chan. Cas. 201. Mich. 26 Car. 2. inter Parker and Dee.*

One Plea only to the Jurisdiction is to be admitted ; wherefore if the Defendant pleads such a Plea as is not sufficient in its nature, or pleads the Matter insufficiently, he will be put to answer.

As Pleas to the Substance and Body of the Matter, so Pleas to the Jurisdiction shall be determin'd in open Court;

In

In the 2d kind of these Pleas, viz. To the Person, it may be shewn that the Plaintiff is by Law disabled to sue; as, That he is outlawed or excommunicated, (which works a temporary Disability;) or that he is attainted, &c. (which is a perpetual Disability:) That he is a Papist convict, or that the Plaintiff or Defendant is not such a Person as is alledged, as Feme Sole, Heir, Executor or Administrator, &c. and is not therefore to sue or be sued as such for the Matter in question.

2. Pleas to the Person, how pleaded.

Note, A Plea of Outlawry is only of Force till the Outlawry be revers'd, but hinders all Proceedings in the mean time: But when it is revers'd, the Plaintiff upon Payment of 20 s. Costs, may upon a new *Subpœna* served, put the Defendant to answer the same Bill.

If an Outlawry be pleaded, the Record, or the *Capias* thereupon, must be pleaded *sub pede Sigilli*, and it is usually annex'd to the Plea; and the Defendant in pleading it may shew as many Outlawries as he can.

Outlawry to be *sub pede Sigilli*, &c.

Outlawry in a Plaintiff, Executor or Administrator, is no good Plea, for they sue *in anter Droit*.

Executor, &c.

If the Outlawry pleaded be in a Suit for that every Duty or Thing for which Relief is sought by the Bill, the Plea will of course be disallowed, and the Plaintiff shall have a *Subpœna* against the Defendant for five Marks Costs, and to make a better Answer. *Ord. Chan.*

Disallow'd.

119.

If a Plaintiff think a Plea of Outlawry insufficient through mispleading or otherwise, he may upon Notice to the Clerk on the other side, set it down with the Register, for the Judgment of the Court.

Mispleaded. Set down with the Register.

But if within eight Days after filing of the Plea, the Plaintiff do not enter it with the Register, the Defendant may take out Process for five Marks Costs as if the Plea had been argued; for the Defendant is not bound to set it down, seeing 'tis a Matter pleaded under Seal. *Ord. Chan.* 119.

Costs.

After the Outlawry is revers'd, the Defendant on a new *Subpœna* served on him, and 20 s. Costs paid him, shall answer the Bill. *Ibid.*

So the Defendant may plead Excommunication, in the Plaintiff, which must be certified by the Ordinary either by Letters Patents, containing a positive Affirmation

Excommunication to be certified, &c. *sub Sigillo.*

mation that the Complainant stands excommunicated, and for what; or by Letters Testimonial, reciting, *Quod scrutatis Registeriis invenitur, &c.* And either of them must be *sub Sigillo*, and so pleaded.

Letters of Absolution.

But after such Plea pleaded, yet the Plaintiff upon producing Letters of Absolution here in Court, &c. will be allow'd to proceed.

Guardians, and *Prochein Amies*.

Outlawry, or Excomengement in a *Prochein Amie*, or Guardian, cannot be pleaded or alledged in Disability where an Infant sues or defends by him; for they sue in *auter Droit*: So of Executors or Administrators. *Supra*.

Administrator, &c.

If one sue as Administrator, the Defendant cannot plead that another is Executor by a Nuncupative Will, before the Executor has Probate of such Will.

Supervisor of a Will.

Where a Bill was exhibited against *J. S.* Supervisor of the Will of *J. N.* and one *J. S.* who was no Supervisor of *J. N.*'s Will, being served with Process, alledged, That the Defendant should put in his Allegations upon Oath by way of Answer, and then desire Judgment, whether he should be compell'd to answer the Bill, and pray his Costs for the unjust Vexation.

1 Chan. Rep. 37.

A different Jurisdiction in Administrations.

If an Administrator, having Administration only in the Province of *York*, sues a Defendant here, who lives in the Province of *Canterbury*, for a Debt which arose in this Province, he may plead it in Disability of the Plaintiff.

Pleas of Alien Enemy, and Attainder.

As to Pleas of Alien Enemy or Attainder, they are so very rarely used, that little needs be said about them; only it may be observed, That where an Alien Enemy is come here for Refuge and Protection, or has lived here peaceably a long time, the Court will discountenance such Pleas against him.

Pleas in Abatement.

Note, The foregoing Pleas are no more than Pleas in Abatement, or in Bar, of such a particular Jurisdiction only: Besides which, there are other usual Causes of Abatement, *viz.* *Coverture*, *Death*, and *Intermarriage*.

Coverture.

Note, If a Feme Sole Plaintiff marries after Answer, and pending the Suit, upon shewing it to the Court, the Suit shall abate, but may be revived by Bill: But if a Feme Covert exhibit a Bill in her own Name only, it may ordinarily be pleaded in Abatement, and the Bill will be dismiss'd. *Cary's Rep.* 139.

A Bill

A Bill was exhibited against a Husband and his Wife, Daughter of the Plaintiff: The Husband put in a Plea in the Name of himself and Wife, and swore it; but the Wife would nor be sworn. He moved, that the Plea might be accepted. suggesting that the Wife refused by Combination with another; and it was ordered, That the Plea should stand for the Husband, and the Plaintiff to proceed against the Wife by Process of Contempt. 1 Chan. Caf. 296.

Plea per Baron and Feme.

The Death of any of the Parties, Plaintiffs or Defendants, causes an Abatement.

So does the Marriage of a Feme Plaintiff, *contra* of Marriage. a Feme Defendant: For 'tis not reasonable she should take advantage of her own Act.

A Feme Sole Defendant having a Commission to examine Witnesses, marries; the Witnesses are afterward examin'd on that Commission, the Depositions were ordered to stand.

A Feme Sole sued a *Subpœna*, and the same Day married; the Suit was dismiss'd with Costs. Cary 139.

If the Plaintiff and Defendant intermarry, the Suit abates; and so it does if but one of the Plaintiffs marry one of the Defendants. 1 Chan. Rep. 68.

Intermarriage.

* See more touching Baron and Feme in the End of this Chapter. * Prac. Reg. 22.

A Plea in Bar is commonly where some foreign Matter or Thing is shewed, whereby supposing the Bill, &c. true; yet the Suit or Bill, or some Part thereof, is barr'd.

3. Of Pleas in Bar, viz.

Sometimes an Act of Parliament is pleaded in Bar; as, the Statutes of Limitations; of Frauds, &c.

Acts of Parliament.

And note, All or several of the Matters pleaded in Bar, may be pleaded together.

Sometimes a Record; as a Common Recovery, a Verdict at Law, a Verdict and Judgment, &c.

Records.

Sometimes both a Statute and a Record; as a Fine with Proclamations, according to the Statute, and five Years Nonclaim.

Fines, &c.

Sometimes a Matter *in Pais*; as a Release, an Account stated, &c. notwithstanding which a Defendant must answer a particular Fraud, &c. if any be alledged.

Matter in Pais.

If the Defendant's Title be Paramount the Plaintiff's, he may plead it in Bar; and so if the Plaintiff has granted or released his Right to the Defendant.

Title paramount, or released.

Lease or
Purchase.

So a Lease, or a Purchase for a valuable Consideration, &c. may be pleaded in Bar, the Defendant by way of Answer denying any Notice of the Plaintiff's Title or Claim.

Long Possession.

So a long and peaceable Possession, as 60 Years or more, may be pleaded in Bar.

Conveyance
of the Right,
&c.

Sometimes this Plea is to the very Ground and Foundation of the Suit, as in a Bill for Discovery of a Title, &c. The Defendant may plead, That the Complainant has convey'd the Premises in question, or his Right to them, &c. to another.

Decree or
Dismission,
or Suit de-
pending.

Sometimes a Decree or Dismission in this Court, or a Suit depending elsewhere for the same Matters, is pleaded in Bar.

Decree and
Bill of Re-
view.

If a Decree is had, and the Party brings a Bill, intending to review the Decree, but does it by way of Original Bill, and not in Form of a Bill of Review, the Defendant may plead the Decree in Bar.

Decree, &c.
in the Exche-
quer.

A Decree and Dismission in the Court of *Exchequer* was pleaded here; but the Plea was over-ruled, and the Defendant put to answer by Advice of the Judges.

Bar to Part,
and Answer
to Part.

Where there are Matters alledged in the Bill to which the Bar reaches not, or some Circumstance relating to the Matter in Bar that requires a particular Answer, as Fraud, &c. the Defendant must answer on Oath as to these.

Answer by
way of Plea.

If the Defendant is doubtful whether if he plead the Matter of his Defence, his Plea will be allowed good by the Court, he may shew the whole Matter by Answer; and then insist and rely upon it almost as if he had pleaded it, only he is not to call it a Plea, nor to have the Benefit thereof till Hearing. *Vide infra.*

Former Suit
depending
how put in.

A Plea of a former Suit depending here for the same Matter, need not be set down with the Register, being a Matter recorded in this Court: But if the Plaintiff be not satisfied with the Plea, it shall be referred to a Master to certify the Truth thereof; and if it be determin'd against the Plaintiff, he shall pay five Pounds Costs. *Ord. Chan. 120. 12.*

And if there be no Report within a Month of Filing the Plea, the Bill will be dismiss'd of course, with several Nobles Costs.

And referred
and reported,

Such Reference must be procured by the Plaintiff, and a Report made thereupon within a Month next after

after filing such Plea, otherwise the Bill is to be dismiss'd of course, with seven Nobles Costs. *Ibid.*

A former Bill depending, was pleaded to a second Bill, which had an Addition of some new Matter: And seeing the Plea was good, the Plaintiff was ordered by the Court to pay the usual Costs of a Plea allowed, and that the Defendant should answer a second Bill, and the former be dismiss'd with 20 s. Costs. 1 *Chan. Caf.* 241. Former Bill dismiss'd with Costs.

If a Suit be depending at Common Law, or in any inferiour Court, it may be pleaded; and the Defendant shall not be put to a Motion for an Election or Dismission: And such Plea shall be proceeded in as a Plea of a former Suit depending in this Court, between the same Parties for the same Matter. Suit at Common Law.

Where the Plaintiff conceives the Plea naught either for the Matter or Manner, he may put it to the Judgment of the Court, and have it argued; or if he thinks the Plea good, but not true, he may take Issue upon it, and proceed to Proofs, &c. Demurrer or Issue.

If a Cause has been formerly dismiss'd, but that Dismission not sign'd and enroll'd, the Plea of such Dismission must be upon Oath, for till the Inrolment it is not recorded

If a Defendant does not enter his Plea with the Register within eight Days after filing, it is over-ruled of course, and the Plaintiff may take out Process for an Answer and Costs. Plea not entered, over-ruled.

This is intended of a Plea of a Matter *in Pais.* and not of a Matter of Record, or recorded: For it is the Plaintiff's part to enter these, if he so likes, else the Defendant within eight Days of the filing of the Plea, may take five Marks Costs, as before in Outlawry. *Vide Ord. Chan.* 119. How intended.

If a Matter not of Record, nor recorded, be pleaded, and the Plaintiff desires the Opinion of the Court, whether, admitting it to be true, it be a sufficient Bar, it must be argued; and if it be adjudged sufficient, and the Plaintiff take Issue, the Defendant must proceed to prove the Truth of his Plea by Depositions, or other Proofs, as on Answers, &c. On an Issue, Plea to be proved.

'Tis said, That if by the Defendant's Oversight, Neglect or Default, his Plea is over-ruled, the Court on Motion, or Petition in time, will order it to be re-argued, Costs on over-ruling.

**Plea to stand
for an An-
swer.**

When.

**Costs on ar-
guing the
Plea.**

**Plea by In-
fant amended
on Costs.**

**Executors
Plea falsified.**

**To a Bill for
relief upon a
Trust allegg-
ing the De-
fendant had
Notice, he
may plead a
valuable Pur-
chaser.
Also he must
deny the No-
tice.**

**He ought to
deny Notice
at the Exe-
cution of
the Convey-
ances, and
this must be
by Way of
Answer.**

argued, the Defendant paying 5 *l.* the Costs of over-
ruling.

Where a Plea is ordered to stand for an Answer (as sometimes on arguing it is) Costs are seldom given on either Side, and the Benefit of the Matter pleaded is generally saved to the Hearing.

This seems to be, where it is doubtful to the Court whether there be not some Equity against the Matter pleaded.

If on Arguing the Plea, it be adjudged good, the Bill is dismiss'd with seven Nobles Costs; but if the Plea be over-ruled, the Defendant pays five Marks Costs.

An Infant pleaded by a Guardian, come of Age, and prayed leave to amend his Plea; it was granted on paying the Plaintiff five Marks Costs.

A false and fraudulent Plea here by an Executor, &c. has the same Consequents and Effects as at Law. *2 Chan. Cas. 201.*

If Outlawry or other Matter be pleaded, and the Plea is over-ruled, no other Plea shall be afterward pleaded; but the Defendant must answer.

Where a Bill is brought to be relieved upon a Trust, and charges the Defendant with Notice of the Trust, before the taking his Conveyance, the Defendant by Way of Answer may deny the Notice, and plead he is a Purchaser for a valuable Consideration, without shewing what the Consideration was, tho' it was objected that 5 *s.* is a valuable, tho' not an equitable Consideration. *1 Chan. Cas. 34.*

And 'tis said *2 Vent. 361.* he must deny the Notice, else his Plea is not good. *Vide 1 Chan. Cas. 39.* Where Notice to him that purchases for another, shall affect the Purchaser himself.

Again, That where the Bill charges Notice before the Defendant took his Conveyance, and the Defendant by Way of Answer, denies the Notice at the Time of this Purchase or Contract, and pleads that he is a Purchaser, &c. this Plea is said to be naught, being founded upon the Answer, which denies only Notice at the Time of the Purchase, which may be understood of the Contract, and not of the Execution of the Conveyances. And such Plea over-ruled. *Vide 1 Chan. Cas. 35. ut supra. Vide 3 Chan. Cas. 161.* that

that Notice must be denied by Way of Answer, and not by Plea.

Vide Hard. 160, Where a Plea was naught for want of an Averment in the Conclusion.

Where the Matter of Plea was special, but concluded generally whether he ought to answer any Matters contain'd in the Bill. *Hard. 216.* It was awarded the Defendant should answer to what was not contained in the Plea.

Want of Averment ill. Must answer to what is not in his Plea.

I shall here add some Precedents of each of those several kinds of Pleas, viz. 1. Pleas to the Jurisdiction. 2. Pleas to the Person. 3. Pleas in Bar.

The Plea and Answer of T. B. Gen. Defendant, to the Bill of Complaint of W. A. Complainant.

THE said Defendant by Protestation not confessing or acknowledging any the Matters or Things in and by the said Bill of Complaint set forth and alledged to be true, saving that the Tenements and Lands with their Appurtenances mentioned in the said Bill concerning the Title, whereof the said Bill is exhibited into this Honourable Court, are scituate, and do lie within the Parish of R. in the said County of C. and for Plea therunto saith, That the said County of C. as this Defendant is informed, is and hath been Time out of Memory of any Man to the contrary, a County Palatine, and that as well the said Messuage and Premises, as all other Lands within the said County Palatine, or belonging thereunto, and all Actions and Suits at Common Law, or in Equity, by Reason of the Premises or any Parcel thereof, have been, or ought to have been by all the said Time, impleaded, and yet are impleadable in the Courts of the said County Palatine before the Judges for the Time being, within the said County Palatine, and not elsewhere, and therefore humbly demands the Judgment of this Honourable Court, if this Court will hold Plea upon, and enforce the Defendant to answer to the said Bill exhibited, as and for the Cause aforesaid, wherein the said Defendant doth submit to the Order of this Honourable Court.

A Plea to the Jurisdiction of the Court of Chancery for that the Lands lie in the County Palatine of Chester, with an Answer confessing the Plaintiff's Father to be seiz'd, but that the Premises were granted to the Defendant the Eldest Son living of the Plaintiffs Father by another Wife, by a Feoffment for a valuable Consideration.

And

And if this Defendant shall by Order of this Honourable Court be compelled to make any other Answer to the said Bill of Complaint, then and not otherwise, this Defendant having saved and reserved to himself both now and at all Times hereafter, all Advantage of Exceptions to the Incertainties and Insufficiencies of the said Bill of Complaint; for Answer thereto, this Defendant saith, That the said Messuages, &c. mentioned in the said Bill, are scituated, and do lie in the Township of C. in the Parish of R. in the County aforesaid; whereof this Defendant doth acknowledge, That the said J. A. mentioned in the Bill, was, together with several other Lands and Tenements in the said County in his Life Time, seized of a good Estate of Inheritance in his Demesne as of Fee, to him and his Heirs in Fee-simple, as is set forth in the Bill; but the Defendant doth deny that the said J. A. died thereof so seiz'd, or that the Premises after his said Death did descend to the Complainant, or that he ought to have enjoyed the same as is pretended by the Complainant's Bill; for this Defendant saith, That the said J. A. being seiz'd of the said Messuage and Premises aforesaid, in his Demesne as of Fee, and bearing a more special and particular Affection to the Defendant, who is the eldest Son living of the said J. A. by another Wife, in consideration thereof, and of 500 l. paid by the Defendant to the said J. A. by his Deed of Feoffment under his Hand and Seal, dated the 16th of September 1692. (duly executed by Livery of Seizin the same Day, in presence of Mr. Justice D. and many other Credible Witnesses) he the said J. A. did convey and assure the said Messuage and Premises, &c. unto the Defendant, his Heirs and Assigns for ever, to the only Use of the said Defendant, his Heirs, and Assigns for ever. (*prout the Deed*) by Force whereof, the Defendant the said 16th Day of September in the Year aforesaid entred, and was thereof seiz'd in his Demesne as of Fee during the Life of the said J. A. and before his Death, and he and his Assigns have ever since hitherto, by Virtue thereof, continued seized, and received the Rents, Issues, and Profits thereof, as he humbly conceives he and they might lawfully do, by

by Reason whereof, and by Vertue of the said Deed of Feoffment, wherein the same are specially granted to this Defendant, this Defendant doth acknowledge he hath in his Custody several Deeds, Writings and Evidences, concerning the Premises which do of Right belong to him for maintaining of his Title, as aforesaid, and for that Purpose, he humbly conceives they ought to remain in his Custody, and not be brought into this honourable Court, unless the Complainant had a good Title to the same, nevertheless the said Defendant is willing to submit to what Order this honourable Court in Justice shall make herein. And this Defendant doth deny that he entred into the Premises, without Pretence of Title by Abatement after the Death of J. A. or that he wrongfully detain'd the Possession thereof from the Complainant as is pretended; but confesses that he refuses, as he humbly conceives he lawfully may, to account with the Complainant for the measn Profits of the Premises, or to deliver unto him the Writings and Evidences aforesaid. Without that, that, &c.

Note, The Jurisdiction of the County Palatine of Lancaster may be pleaded, as that supra, (mutatis mutandis.) Jurisdiction of the County Palatine of Lancaster.

The Plea of A. G. Gen. Defendant, to the Bill of Complaint of, &c.

THIS Defendant by Protestation, &c. for Plea thereunto, saith, That the University of Oxford, is an antient University, and Time beyond the Memory of Man, hath been incorporated by the Name of the Chancellor, Masters, and Scholars of the University of Oxford, and the said Masters and Scholars of the University of Oxford have, and beyond the Memory of Man have had, and used to have a Court, to be holden at any Place within the Precincts and Limits of the University, where the Chancellor of the said University, or his Vice-Chancellor, Commissary, Official, Lieutenant, or Deputy doth appoint, and the said Chancellor, Masters and Scholars have, beyond the Memory of Man, had and used to have Cogni-
O zance

A Plea of the Privilege of the University of Oxford, to the Jurisdiction of the Court of Chancery.

Of Pleas to the Jurisdiction.

zance of all and all Manner of Actions, Suits, and Pleas whatsoever (except Assizes, and Pleas of Freehold) whereof any Scholar, or privileg'd Person of the said University is one Party, to be heard and determined before the Chancellor, or his Vice-Chancellor, Commissary, Official, Lieutenant or Deputy for the Time being in the said Court, for and during all the Time aforesaid, and all Actions, Suits, Complaints, Debates, and Controversies whatsoever, wherein any Scholar or privileged Person of the said University is one Party (except Assizes and Pleas of Freehold) by the Customs and Privileges of the said University, have been, and have been used to have been heard, and examined, and determined in the said Court by the said Chancellor, or his Vice-Chancellor, &c. for the Time being, according to Law, Equity, and Justice, and not elsewhere, or in any other Court, or before any other Judge. And the said Court is, and Time beyond the Memory of Man hath been, a Court as well of Law as Equity, and doth not use to give or allow to any Party Penalties of Bonds, or any other Extremities of Law, but the Judges for the Time being do, and during all the Time aforesaid have used to determine all Complaints, Suits, Matters and Things therein depending, according to the Rules as well of Equity as of Law, and to mitigate and moderate Suits and Actions, according to Equity and good Conscience, as the Cause shall indifferently appear upon Proof before them made, and the said Chancellor, Masters, and Scholars have, and beyond the Memory of Man have had, and used to have Ministers and Officers of their own, to execute such Judgments and Sentences as shall be there given, and to execute by Vertue thereof such Procefs, as upon Execution or otherwise shall issue out of the said Court within the Realm of England; and upon Notice that every Person there sued, is a Person that by the Customs of the said Universities, ought to enjoy the Privileges of the said Universities, they ought to surcease, and not to proceed in any of the Matters aforesaid, if either of the said Parties be a Scholar, or privileged Person of the said University. And that Time beyond the Memory of Man, all Graduates and Scholars of the said Uni-

Universities and their Servants, and all Stationers and Bookbinders, Inhabitants of the said Universities, and all Servants and Officers of the said Universities have had, and have used, and ought to have and enjoy the Liberties and Privileges of the said Universities, and there in the said Court of the said Chancellor, Masters and Scholars, to sue and be sued, and impleaded for all Matters, Suits, and Complaints whatsoever (except Assizes and Pleas of Freehold) and not elsewhere, or before any other Judge whatsoever, and that *K. H. VIII.* by his Letters Patents under the Great Seal of *England*, and inrolled in this honourable Court, bearing Date on or about the 12th of *April*, in the 24th Year of his Reign, hath granted, ratified, and confirmed unto the said Chancellor, Masters, and Scholars, and their Successors amongst other Things, the said Liberties, Franchises and Privileges, which Privileges have also been confirmed by divers of his said Majesty's Successors, and at the Parliament holden at *Westminster* the 2d of *April*, 13 *Eliz.* it was amongst other Things enacted, That the said Chancellor, Masters, and Scholars, and their Successors, should have and enjoy all the before-mentioned Immunities and Liberties in all Things, as in the aforesaid Letters Patents to them were granted, or intended to be granted, (*Vide the Act.*) And the said Liberties and Franchises have at several Times been allowed in this honourable Court as by the Records thereof, unto which this Defendant referreth himself, more particularly it doth and may appear. And for further Plea this Defendant saith, That he this Defendant is Head, principal Rector, &c of such a College within the said University, and resident there, and by that Means privileged, and ought not to be sued in this Court, as by the Certificate of the Chancellor of the same University, under the Seal of the said University, hereunto annexed, more particularly doth appear, and he this Defendant dwelling and inhabiting within the said University, and being a privileged Man there, he ought to be sued in the Court of the said Chancellor, Masters and Scholars of the said University of *Oxford*, and not elsewhere, or in any other Court, or before any other Judge. Where-

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Of Pleas to the Person.

fore, and for that the Bill, if the Complainant had entitl'd himself to any Demand against this Defendant, which he hath not, as this Defendant is advis'd, but seeks only an Account against this Defendant, which if there be any just Cause for the same, he may be relieved in, by the said Court of the said Chancellor, Masters, and Scholars of the said University of Oxford, and for that there is not any Demand by the Bill of any Freehold, nor hath the said Complainant entitl'd himself thereby to any Estate of Freehold, nor so much as to any Account against this Defendant as he is advis'd; for all which said Causes, this Defendant doth humbly demand the Judgment of this Court, whether he shall be compell'd to make any Answer at all unto the said Bill, and humbly prays to be hence dismiss'd with his Costs and Charges in this behalf wrongfully sustained.

Privilege of
the Universi-
ty of Cam-
bridge.

Note, the Privilege of the University of Cambridge may be pleaded *ut supra Mutatis Mutandis*; but *Quere* the Words of their Charter.

Next follow Pleas to the Person, *viz.* Outlawry, &c. *viz.*

2. Pleas to the
Person. An
Outlawry
pleaded to
the Com-
plainant's
Bill.

The said Defendant by Protestation, &c. and for that this Defendant conceiveth, That the Complainant hath exhibited his Bill against this Defendant vexatiously, rather to put this Defendant to Charge and Expences, than for any just and equitable Cause; for Plea thereunto saith, That the said Complainant stands outlawed at the Suit of T. B. in a Plea of Debt, as appears by a Writ of *Capias Uilgat.* under Seal hereunto annexed. And this Defendant doth and will aver and maintain, that the said Outlawry remains in its full Force unreversed, and not annihilated or vacated; and that the said T. D. so outlawed in the said Writ named, and the said T. D. the now Complainant, is one and the same Person, and not another and divers; and therefore this Defendant humbly craves the Judgment of this honourable Court, whether he, this Defendant, shall be compelled to answer the said Bill of Complaint until the said Complainant hath reversed the said Outlawry (and become a Person of Ability, and capable to exhibit any such Bill of Complaint against this Defendant) and (in the

the mean Time) prays to be hence dismissed with his Costs, &c.

The said Defendant not confessing, &c. For Plea thereunto saith, That the Complainant now is, and standeth a Person outlawed in several Actions, and so is and standeth disabled by the Laws of this Realm, to sue or commence any Suit or Suits in this Honourable Court, or in any other Court, until the same Outlawries are revers'd; for he this Defendant saith, That on *Monday* next after the Morrow of *All Souls*, in the second Year of her Majesty's Reign that now is, the Complainant was outlawed after Judgment at the Suit of *W. B.* in an Action of Debt, and on *Monday* next before the Feast of the Conversion of *St. Paul*, in the said second Year of her said now Majesty's Reign, the said Complainant was likewise outlawed, after Judgment in an Action of Debt, at the Suit of *T. G.* and on *Tuesday* the sixth Day of *June*, &c. (and so recite the several Outlawries.) As by the said several Outlawries *sub pede sigilli* hereunto annexed may appear, which said Outlawries do yet stand unrevers'd, and remain in full Force. And this Defendant doth aver, That the said *F. R.* Complainant, named in the said Bill of Complaint, and the said *F. R.* named in the said several Writs of *Capias utlagatum* hereunto annexed, is one and the same Person, and not divers and several, and therefore prays, &c. *ut supra*.

Several Outlawries after Judgment pleaded to the Complainant's Bill.

The Plea of T. W. an Infant Defendant, by R. G. his Guardian, to the Bill of Complaint of W. B. Esq; Complainant.

THE said Defendant by his Guardian not confessing, &c. And saving to himself, &c. For Plea thereunto this Defendant by his Guardian saith, under Favour of this Honourable Court, That as he is advised, Persons lawfully put in Exigent and outlawed by the Common Laws of this Nation for any Matter or Cause whatsoever, are during the Time of their so standing outlawed, and the Outlawry unreversed, disabled to commence or prosecute any Suit or Action at the Common Law, or in Equity, against

An Outlawry pleaded by Guardian.

any Person or Persons in any of their Majesties Courts at *Westminster*, so far forth as the Person or Persons against whom such Suit or Action shall be commenced, may lawfully plead such Outlawry in Bar of such Action or Suit. And further this Defendant by his said Guardian saith, That the now Complainant now standeth outlawed in their Majesties Court of *Common Pleas* at *Westminster* by the Name of *W. B.* at the Suit of this Defendant in a Plea of Trespas, as in and by the said Outlawry *sub pede Sigilli* hereunto annexed, may more fully appear. And avers (*ut supra*) an Identity of the Person. And therefore the said Defendant by his Guardian doth, by way of Plea, abide in Law thereupon, resting in and upon the Judgment of this Honourable Court, whether he for the present shall be or ought to be by the Rules of Law compelled to give any further or other Answer to the said Bill of Complaint, or any of the Matters or Things therein contained. All and every of which said Matters he this Defendant by his said Guardian will be at all Times ready to answer and prove as this Honourable Court shall award, and prays to be hence dismissed, &c.

Excommuni-
cation.

Query, How an Excommunication can be pleaded in this Court, that being a Matter only of Spiritual Cognizance, and not cognizable here?

Respons. The Bishop is to certifie such Excommunication, and that Certificate is to be annexed to the Defendant's Plea, and pleaded *ut supra*. *W. B.*

3d Pleas in
Bar.

In the third Place follow Pleas in Bar, *viz.* Accountt stated, Releases, Acquittances, Conveyances, Fines, Verdicts, Judgments, Decrees, former Suits depending the Statute of Limitations, the Statute of Frauds and Perjuries, &c. as will appear by the following Precedents.

An Accompt
stated, and an
Acquittance
pleaded in Bar
to Part of a
Bill.

The Plea of T. D. Gen. Defendant, to Part, and his Answer to the Residue of the Bill of Complaint of H. D. Complainant.

THE said Defendant by Protestation not confessing or acknowledging all or any of the said Matters and Things in the said Bill of Complaint contained,
to

to be true in such Manner as they are therein and thereby set forth and *alleged*, as to such Part of the said Bill as demands an Account of and concerning any Matters and Things transacted between the Complainant and this Defendant at any Time before and unto the 28th Day of *February* 1710. And as to all such other Part of the Bill as is not herein after answered unto, this Defendant doth plead thereunto, and for Plea saith, That after this Defendant had compleated and finished his first Voyage to *V.* in the Bill mentioned, that is to say, upon the said 28th Day of *February* aforesaid, the Complainant and this Defendant did make up, and state, and settle an Account in Writing, then delivered to the Complainant, of the said Voyage, and of all Matters and Things thereunto relating, or at any Time before the said 28th of *February* being or depending between the Complainant and this Defendant. And the Complainant, after a strict and serious Examination of the said Account, and every Particular thereof, did approve and allow of the said Account, and did actually pay and satisfy all Monies then due on the Balance of the said Account; and thereupon the same 28th Day of *Feb.* the Complainant did give to this Defendant a Receipt or Acquittance under his Hand, which is in these Words, *viz.* *Received this 28th Day of February 1710. from T. C. the Sum of 92 l. being in full of all Accounts to this Day. I say, Received per Me, H. D.* As in and by the said Acquittance under the Hand of the said Complainant, and ready to be produced to this Honourable Court, may appear. And this Defendant doth plead the said Account staeed, the Payment of the said Monies, and the said Receipt or Acquittance in Bar to such Part of the said Bill as demands an Account from this Defendant for any Matters or Things in the Bill mentioned, on or before the said 28th of *February* 1710, and humbly demands the Judgment of this Honourable Court, Whether he shall make any other or further Answer (to that Part of) the Complainant's said Bill of Complaint (and for Answer to the Residue of the said Bill, this Defendant saith, &c.) and prays to be dismiss'd with Costs.

Note, The Answer to the other Part is here omitted, being only a common Form.

Receipt or Acquittance.

A Release
pleaded in
Bar.

This Defendant by way of Plea saith, That since the exhibiting of the said Bill of Complaint into this Honourable Court, that is to say, on or about the Day of, &c. the said Complainant by a Release by him signed, sealed, and delivered, bearing Date the said --- Day of, and ready to be produced to this Honourable Court as this Honourable Court shall award, did for himself, his Executors and Administrators, remise, release, and for ever quit claim unto this Defendant, his Executors and Administrators, all and all Manner of Actions, Suits, Debts, Bonds, Bills, Specialties, Judgments, Executions, Accompts, Trespasses, Matters, Demands and Things whatsoever, which the Complainant, his Executors or Administrators then had, or hereafter might or could have against this Defendant, his Executors or Administrators, for or in Respect, or by Reason or Means of any Matter, Cause, Act or Thing whatsoever, from the beginning of the World until the Day of the Date of the said Release: For which Cause, this Defendant humbly demands the Judgment of, &c. *ut supra*.

Conveyances, Fines, and a Decree pleaded in Bar.

A Verdict and Judgment thereupon not reversed by Attaint or Error, and the Stat. of 4 H. IV. pleaded in Bar to a Bill.

See several Conveyances and Fines, and a Decree of this Court pleaded in Bar of the Complainant's Bill, in the End of this Chapter.

The said Defendant by Protestation, &c. to *alleged*, *ut supra*, the Plaintiff's said Bill being to be relieved against an Action at Law brought by this Defendant for Fees due to this Defendant for managing several Law-Suits for the Complainant, and for Monies laid out and expended by this Defendant for the Complainant in managing the same, and to bring this Defendant to an Accompt. This Defendant for Plea to the said Bill saith, That by a Statute made in the Parliament holden at *Westminster* the Morrow after the Feast of *St. Michael*, in the fourth Year of the Reign of King *Henry IV.* it is ordained and established, That after Judgments given in the Courts of our Sovereign Lord the King, as well in Pleas Real as in Pleas Personal, the Parties and their Heirs shall be thereof in Peace until the Judgment be undone by Attaint or Error. And this Defendant saith and averreth,

reth, That before the Complainant's said Bill of Complaint exhibited, this Defendant brought an Action in the Court of *Common Pleas* at *Westminster*, for the Recovery of his said Fees and Monies expended and due to this Defendant from the Complainant as aforesaid, and obtained a Verdict for 14*l.* and hath Judgment thereupon, which Judgment this Defendant avers was obtained before the said Bill exhibited, and yet remains in full Force, and is not undone by Attaint or Error, and therefore this Defendant pleads the said Statute and Judgment in Bar of the Complainant's said Bill, and humbly prays the Judgment of, &c.

For Plea unto the said Bill saith, That what Materials were provided by the Complainant, or delivered by the Complainant for the Defendant's Use, or upon his Account; and what Building or Work was done by the Complainant for this Defendant that is mentioned in the said Complainant's Bill, was provided, delivered and done by the Complainant above six Years before this Defendant was served with any Process of this Court to answer the said Bill, and that if the Complainant ever had any Cause of Action against the Defendant for or concerning any the Matters in the Bill mentioned, which this Defendant doth in no sort admit to be true, the same did accrue or arise above six Years before the filing of the said Bill, or serving this Defendant with any Process (thereupon,) nor did this Defendant at any Time within six Years past promise, or agree to come to any Account for, or to pay the Complainant any Monies for any Materials, Buildings, or Work in the Bill mentioned, or for any of the Complainant's pretended Demands in his said Bill mentioned. And therefore this Defendant doth plead the Act of Parliament, or Statute of Limitations made in the one and twentieth Year of the Reign of the late King *James I.* and prays the Benefit of the said Act of Parliament for Limitation of Actions. All which Matters this Defendant pleadeth in Bar of the Complainant's said Bill, and of the Complainant's pretended Demands by his said Bill, for which he seeks to be relieved, and in Bar of the said Bill; and this Defendant prays to be hence dismissed, &c.

The Statute of Limitations pleaded in Bar to the Complainant's Bill.

Brought for Work done.

And

*Simile on a
Bill for
Goods sold,
&c.*

*Plea reciting
the Statute of
Limitations.*

And the *Plea of the Statute of Limitations* may be on a Bill brought for *Goods sold and delivered, viz.* That what Goods, Wares, and Merchandizes were by the Complainant sold and delivered to the Defendant mentioned in the said Bill, were sold and delivered above six Years before this Defendant was served, &c. as above *mutatis mutandis.*

Or this Plea may be made with a particular Recital of the Act of Limitations in this Manner, *viz.* The said Defendant by Protestation, &c. For Plea thereunto saith, By an Act of Parliament held at *Westminster* in the County of *Middlesex*, in the one and twentieth Year of the Reign of King *James I.* entitled, *An Act for Limitation of Actions, and avoiding of Saits at Law*, it was thereby enacted, That all Actions of Trespass, &c. (as the Act is verbatim to the Words, *within two Years after the Words spoken, and not after; And note, herein great Care must be taken to recite it truly.*) And now forasmuch as the Scope of the Complainant's Bill is to have a Debt of 7 *l.* 6 *s.* 10 *d.* which, as he pretends, was due to him for Fees and Money laid out and expended in managing of the Suit or Cause in the Bill mentioned for the said Defendant, in the Year of our Lord one thousand seven hundred and six, and 5 *l.* that the said Defendant promised in the said Year to give him for his extraordinary Care and Pains in managing the said Cause; which said Debt contracted, and Promise made by this Defendant to the Complainant, being in the said Year 1706. as by the said Bill is alledged, appears by the Complainant's own shewing to be more than seven Years past since the said Debt was contracted, or Promise made, and the same not relating to any Merchant's Accompts, their Servants or Factors, and no Suit having been commenced for the same Debt or Promise, or either of them, by the said Complainant against this Defendant within the Time so limited and appointed by the said Act, for bringing the same, this Defendant is by his Counsel advised, That the said Suit in this Court for the said Debt and Promise is barred by the said Act of Parliament, and that the Complainant ought not to be relieved for the same. And therefore this Defendant doth plead the said Act of Parliament in Bar to the said Complainant's

plainant's Demands, and humbly prays the Judgment of this Honourable Court, whether, &c.

This Defendant by Protestation, &c. (to) as therein and thereby is alledged, saith, That he is advised that the Plaintiff by his said Bill seeks to have a Discovery of a supposed Marriage-Agreement, or Promise suggested to be made by the Defendant in the Month of *August*, in the Year of our Lord 1704. or at some Time since, to pay unto the Complainant the Sum of 100 l. as a Marriage-Portion upon the Plaintiff's Marriage with *M.* his late Wife deceased, and to be relieved thereupon. To which Discovery and Relief, this Defendant, as advised, doth plead, and for Plea thereunto saith, That by a Statute or Act of Parliament made in the 29th Year of the Reign of King *Charles II.* entituled, *An Act for Prevention of Frauds and Perjuries*, It is amongst other Things enacted, That from and after the 24th Day of *June*, in the Year of our Lord 1677. no Action shall be brought whereby to charge any Person upon any Agreement made upon any Consideration of Marriage, unless the Agreement upon which such Action shall be brought, or some *Memorandum* or Note thereof shall be in Writing, and signed by the Party to be charged therewith, or some other Person thereto by him authorized, or to that very Effect; which Statute, and particularly the said Clause therein, this Defendant doth plead in Bar of the said Plaintiff's Demands, the Plaintiff not suggesting that the Agreement or Promise by him suggested to be made, was ever put into Writing, and signed by this Defendant, or by any other Person by his Order. And this Defendant doth humbly demand the Judgment of this Honourable Court, &c.

The Statute of Frauds and Perjuries pleaded in Bar to the Complainant's Bill.

This Defendant by Protestation not confessing or acknowledging all or any the Matters or Things in the Complainants said Bill of Complaint to be true, in such Manner and Form as the same are therein declared and set forth: For Plea thereunto saith, That the said Complainants in *Trinity-Term*, which was in the Year of our Lord 1712. did exhibit their Bill into this Honourable Court against this Defendant, and one *E. T.* to have an Account of the Monies raised by the

Plea of a former Suit depending for the same Matter.

Of Pleas in Bar.

the Sale of the Plantations, and other Estates in the Complainants now Bill mentioned, and claiming such Shares and Proportions thereof, and such Rights and Interests therein, as by their present Bill they do now claim, and praying Relief as to this Defendant in the same Manner, and for the same Matters, and to the same Effect as they do now by their Bill, to which said first Bill, this Defendant, and the said E. T. did put in their Answer, and the said Complainants thereunto replied, and Witnesses were examined on both Sides, and their Depositions duly published, and the said former Bill is still depending in this Honourable Court, and the said Cause is yet undetermined, and therefore this Defendant doth plead the said former Bill, Answer, and Proceedings in Bar to the said Complainants now said Bill, and humbly demands the Judgment of this Honourable Court, Whether he shall be put to make any further or other Answer thereunto, and prays to be hence dismissed, with his Costs and Charges in this Behalf sustained.

A Fine and
Recovery
pleaded in
Bar.

The said Defendant by Protestation, &c. saith, That inasmuch as the said Bill seeks to draw in Question his this Defendant's Title to the Lands and Tenements therein and hereafter mentioned, and to deliver up the Deeds and Writings touching and concerning the same, unto them the said Complainants, or to either of them; and therefore this Defendant, as advised by his Counsel, for Plea thereunto saith, That W. W. in the said Complainant's Bill named, was seised in Fee or in Fee-Tail to him and the Heirs Males of his Body, of and in all those Messuages, Lands, &c. in the Complainant's Bill mentioned, commonly called or known by the Names of, &c. and situate, &c. And that he the said W. W. being so thereof seised, and of the Age of 24 Years and upwards, did in *Michaelmas* Term, in the Year of, &c. in due Form of Law, acknowledge and levy unto E. C. and J. S. and the Heirs of the said E. in his Majesty's Court of *Common Pleas* at *Westminster*, one Fine *sur Conuzance de droit come eco*, &c. with Proclamations in that Behalf made, of all and singular the said Premises, and that in the same Term a good and perfect Common

Recovery was in due Form of Law had and suffered in the same Court of *C. P.* of the same Premises, in which Recovery *T. G.* and *E. H.* did demand the Premises of the said *E. C.* and *J. S.* who vouched to Warranty the said *W. W.* who vouched over to Warranty the common Vouchee, as in and by the Records of the said Fine with Proclamations and Common Recovery, Relation being thereunto had, may more fully and at large appear. And that he this Defendant is advised by his Counsel, and believes that the said Fine was so levied by the said *W. W.* to the said *E. C.* and *J. S.* as aforesaid, to make them Tenants of the Freehold thereof, that so a Common Recovery might be had and suffered thereof, in Manner and Form aforesaid. And this Defendant by way of Plea further saith, That the said *W. W.* in the Year of, &c. died without Issue of his Body, and that *J. W.* the Complainant's Father in the said Bill named, was living at the Time of the Death of the said *W. W.* and believes and hopes to prove of the Age of 21 Years and upwards, and *Compos Mentis*, and at large and out of Prison, and within the Four Seas; and that he the said *J. W.* survived the said *W. W.* above ten Years, and did not within Five Years of the Proclamations had and made upon the said Fine, or at any Time after prosecute any Title, Claim or Interest of, in or to the said Messuages, &c. or any Part or Parcel thereof by Action, lawful Entry or otherwise, so that (as advised) the Remainder in the said Complainants Bill alledge to be limited of and in the said Premises, or any Part thereof to the said *J. W.* and his Heirs, for default of Heirs Males of the Body of the said *W. W.* by the pretended last Will and Testament of Sir *E. W.* in the said Bill also named, was dock'd by the said Recovery; and that in Case the said Remainder was not dock'd by the said Recovery, yet however, the Complainants are barred of all Claim of, in and to the said Premises, and every or any Part of the same by Virtue thereof, and by Force of the said Fine with Proclamations thereupon, and *Non-claim* as aforesaid. And he this Defendant doth aver his said Plea; and humbly demands the Judgment of this Honourable Court, whether, &c.

A further Plea, that the Heir did not claim within 5 Years.

Averment.

Having

Of Demurrers distinct from Pleas, &c.

Demurrer defined.

Causes thereof. Matter defective in the Bill, or foreign.

New Causes.

Costs.

General Demurrer disallowed.

Having in the beginning of this Chapter shewn you some Rules and Precedents of Pleas and Demurrers jointly, I now come to treat of Demurrers more particularly, *viz.* as they are separated and divided from Pleas and Answers.

A *Demurrer* is the Allegation of the Defendant, which admitting the Matters of Fact, or some of them alledged by the Plaintiff in his Bill to be true, shews, that as they are set forth by the Complainant himself, they are insufficient for him to proceed upon, or oblige the Defendant to make Answer unto; and therefore it demands the Judgment of the Court, Whether the Defendant shall be compelled to make Answer to the Plaintiff's Bill, or to some certain Part thereof.

And a *Demurrer* must express the Cause or Causes of the *Demurrer*, and that is always where there is Matter defective contained in the Bill, or where there is foreign Matter alledged by the Defendant; yet other Causes may be insisted on at the Time of the arguing or Determination thereof by the Court.

Though by the Rule of the Court every *Demurrer* shall express the several Causes of *Demurrer*, yet 'tis said other Causes may be insisted on at the arguing thereof. But if any Cause shall be insisted on at the arguing, besides what is particularly alledged in the Ingrossment on the File, and the Bill be dismiss'd in respect of such Cause newly alledged, yet the Defendant shall pay the ordinary Costs of Five Marks, if the Causes particularly alledged be disallowed. *Ord. Chan.* 118.

If a general Demurrer, or without Cause, be put in, it will be over-ruled or disallowed. *Cary* 125.

But properly the Causes of Demurrer are upon Matter defective in the Plaintiff's Bill, and not from any foreign Matter alledged by the Defendant; and therefore in the *Demurrer*, 'tis said, as appears by the Complainant's own shewing.

And touching Causes of Demurrer observe the following Cases, *viz.*

One Mr. *Daniel Hill* having put in for his Client a long insufficient Demurrer to a Bill; in which Demurrer were many Matters of Fact, and other Things frivo-

frivolous and vain; the Court gave the Plaintiff Five Pounds Costs, and ordered that no Pleadings should ever after be received under his Hand in this Court, 1 *Jac. Cary* 27.

A Bill was put in by J. S. Supervisor of the last Will of W. and another of that Name was served with the Process that was not the Man himself, who indeed was dead; and the Court ordered, That the Defendant shall put in his Case by way of Answer upon Oath, and then demand Judgment whether he shall be compelled to answer or not, and so pray Costs for the Vexation, which will be allowed. *Harrison's Case*, 19 *Eliz. Cary's Rep.* 61.

The Plaintiff put in two Bills, having served only one *Subpœna*, and the Defendant was ordered to answer both of them. *Ap Rice's Case*, 21 *Eliz. Cary's Rep.* 87.

The Defendant demurred generally, without shewing any Manner of Cause; and the Court ordered a *Subpœna* to make a better Answer. *Duffield's Case*, 21 *Eliz. Cary's Rep.* 88. 87. and *Peachy's Case*, 21 *Eliz. Cary's Rep.* 1 3. and again 107.

A Woman that had an Husband parted from her, sued alone for Maintenance set apart for her by the Husband's Agreement, and put into another's Hand, He demurred because she sued without the Husband, and it was allowed to be good. *Walgrave's Case*, *Cary's Rep.* 87.

The Defendant made Oath, That he could not answer without Sight of Evidences in the Countrey, and having a Day given him he put in no Answer but a Demurrer; and an Attachment was awarded against him. *Farmer's Cases*, 21 *Eliz. Cary's Rep.* 110.

The Defendant refused to answer the Receipt of Rent, and demurred for that the Plaintiff had Remedy by Law: But if it was over-ruled, and he put to make a better Answer by *Subpœna*, *Dix's Case*, *Cary's Rep.* 71.

The Plaintiff shewed that the Copy of Court Roll, whereby the Defendant pretended Title, was indifferently entred by the Steward's Clerk of the Manor. To this the Defendant demurred, pretending he shall not be received to impeach the Court-Rolls; and saith further, The Homage found the
Copy

Costs for a frivolous Demurrer.

A wrong Person served with Process.

Two Bills on one *Subpœna*.

Upon a general Demurrer.

For that the Wife sued without the Husband.

Attachment for demurring and not answering.

For that the Plaintiff had Remedy at Law.

For that he shall not impeach Court-Rolls.

Over-ruled. Copy to be true; and it was over-ruled and ordered, that a better Answer must be made. *Holder's Case, 18 Eliz. Cary's Rep. 55.*

Demurrer to the Answer. In some special Cases a Demurrer may be properly put in to an Answer, and such Demurrers have been divers Times. allowed, 1 *Chanc. Cases 56.* 2 *Chan. Cases 8.*

And Repliation. So where the Replication contained new Matter, not in the Bill, nor arising from the Answer, but known to the Plaintiff at the exhibiting of his Bill, the Defendant pleaded and demurred to the Replication, and the Court allowed it. 1 *Chanc. Rep. 259.*

So a Demurrer may be to Interrogatories. *Vide post Tit. Interrogatories.*

Bill amended after Demurrer. If a Demurrer is put in upon a Slip or Mistake in the Bill, the Plaintiff paying the Defendant's Clerk 20 s. Costs may of Course without Motion amend his Bill within eight Days after the Demurrer put in, but not after that Time without Consent.

Costs on a Demurrer admitted, and Bill amended, &c. or dismiss'd. If within eight days after a filing a Demurrer the Plaintiff admits it to be good, and pays the Defendant's Clerk 40 s. the Defendant need not set it down to be argued; for the Bill stands dismiss'd of Course without Motion, unless both Sides agree to such Amendment. But such Dismissal in no Bar to a new Bill.

No Demurrer after Attachment, &c. As no Plea, so no Demurrer shall be received after Attachment with Proclamations returned, but upon Motion in open Court, and *Affidavit* of the Cause of the Delay. *Ord. Chanc. 121.*

Contra where a general Pardon. Yet where after a Proclamation returned, there came a general Pardon, and the Defendant appeared and put in a Demurrer, it was held he might do so. 1 *Chan. Cases 232.*

Costs on over-ruling. As in the Case of a Plea, so in that of a Demurrer, if it be over-ruled, the Defendant pays Five Marks Costs; But if on arguing it be allowed or adjudged good, the Bill is dismiss'd, and the Plaintiff pays Costs.

How brought on and determined. And as a Plea, so a Demurrer may be brought on either in the common and ordinary Course, or by Motion or Petition; but they are all to be determined in open Court.

If a Demurrer be not by the Defendant within eight days after the filing, entred with the Register in order to be set down to be argued, it is over-ruled of Course, and the Plaintiff may take out Proceſs for Coſts and a better Answer. *Ord. Chanc.* 118.

As the Register ſhall not enter any Plea, ſo he ſhall not enter any Demurrer in the Paper at the Inſtance of any Perſon, upon a Warrant for ſetting down the ſame on a certain day, unleſs as before is ſhewn in the Title of *Pleas* and *Demurrers*.

If upon a *Dedimus* the Defendant returns no Answer but a Demurrer or Plea, or both, which ſhall happen to be over-ruled, he ſhall pay the uſual Coſts of Five Marks; and though they be allowed good, yet he ſhall have no Coſts, becauſe of the needleſs Trouble and Delay given to the Plaintiff by ſuch Commiſſion, without which he might have ſo pleaded or demurred.

If a Defendant obſtinately inſiſts on his Demurrer, and refuſes to answer where the Court is of Opinion, that ſufficient Matter is alledged in the Bill to oblige him to answer, and for the Court to proceed upon; The Court will decree the Matter of the Plaintiff's Bill: For by the Demurrer are confeſſed all Matters of Fact that are well alledged.

Where a Defendant brought up from the *Fleet* on an *alias Habeas Corpus* to answer a Bill, put in a Demurrer without Leave of the Court, the Court diſcharged and quaſh'd the Demurrer, and granted a *Pluries Habeas Corpus*.

My Lord Coke in 4 *Inſt.* 33. ſeems of Opinion, That where upon a Demurrer a Bill is adjudged inſufficient, the Defendant ſhall have no Damages, for they are given by *Stat. 17. R. 2. c. 6.* where the Truth of the Plaintiff's Suggestion is tried, &c. which is not done upon a Demurrer where the Fact is confeſſ'd; the Words of the Statute being, That if ſuch *Suggestions* be duly found and proved untrue.

But ſee the *Stat. 15 H. 6. c. 4.* which reciting, that *Subpœna's* are often had for Matters determinable at Common Law, enacts, That no *Subpœna* ſhall be iſſued till Surety found to ſatiſſie the Party grieved his Damages and Expences, if the Matter cannot be made good which is contained in the Bill.

P

And

Entred with the Register.

How entred.

Coſts on a Demurrer over-ruled, taken by *Dedimus*.

Bill taken *pro Confeſſo*, where the Defendant is obſtinate in his Demurrer.

Demurrer quaſh'd, if without Leave.

No Damages on a Demurrer, per Coke. *Stat. 17. R. 1.*

Stat. 15 H. 6. cap. 4.

Costs on a Demurrer, or Plea, over-ruled, or dismissal.

Order for Dismissal set forth in the Demurrer.

Dismissals on Motion.

Demurrer to be under Counsel's Hand without Oath.

Note.

On Bill of Revivor, a Demurrer for that more was pray'd than can be reliev'd.

1. The like Cause.

2. Discovery of Assets.

And though this *Statute* be not observed as to the giving Security, yet the Costs are always given; and so 'tis upon a Plea or a Dismissal, for want of Prosecution.

Where a Suit appeareth by the Bill to be of the nature of any of those which are regularly to be dismissed, according to the Order for Dismissal made formerly, I think, in my Lord *Bacon's* time, the said Order is to be set forth by way of Demurrer.

By ancient Orders, Suits grounded upon Nuncupative Wills; long Leases tending to establish Perpetuities; Estates with Remainders over to the Crown to defeat Purchasers; or for Brocages, or Rewards to make Marriages; for Agreements at Play, or Wagers; Bargains for Offices contrary to the Statute of *Ed. 6.* or upon Contracts for Simony or Usury; are regularly to be dismissed upon Motion, if they make up the whole Matter of the Bill, and there be no special Circumstances to induce the Court to allow them a Procedure.

A Demurrer is to be put in under Counsel's Hand without Oath; wherefore if a Defendant had taken a *Dedimus* to answer only, and return'd only a Demurrer, an Attachment was to go against him. But see before in the Chapter of Answers, That a Demurrer may well be taken on a general Commission to answer only.

A Bill of Revivor was to revive all the former Proceedings, and particularly the Order by Consent; The Defendant demurr'd to the Bill, for that it sought to revive that Order; whereas the Feine was a Party to it, and she being married since the Executorship; her Consent to the Order of Reference was consequently determin'd: And upon Debate, the Demurrer was allow'd. 1 *Chan. Cases*, 77.

And see *ibid.* 226. *Davis versus Curtis*: The Defendant demurr'd; 1st, Because the Relief sought was for more than the Security by Bond, and therefore not proper in Equity. 2^{dly}. For that, that Part of the Bill which was for the Discovery of Assets, was ill, because the Charge was not positive that Assets, or any Goods, came to the Defendant's hands; and both Points allow'd

allow'd as good Causes. And note, the Bond in this Case determin'd the Parol Agreement.

A Demurrer was to a *Subpæna* in Nature of a *Scire facias*; and it was, because he that brought the *Subpæna* did not thereby alledge himself to be Heir or Executor to him that had the Decree: It was resolved, That there was never any Demurrer of this nature before; and the *Subpæna* was no Record, nor any where filed, and so not to be demurr'd to: But the Cause was to be shewed upon the Return of the Writ on the Order; and the Order did mention him that brought the Writ to be both Heir and Executor. So this Demurrer was conceived very ridiculous, and over-ruled. 1 *Chan. Cas.* 50.

A Bill laying a Promise to assure Lands for 10 s. in Hand, and 2100 Pounds at Days; demurr'd to, and allow'd, because it was but a Preparation for an Action upon the Case. *Trin.* 38 *Eliz.* *inter Williams and Nevil, Tothill* 72.

That a Demurrer for Outlawry must be upon Oath, and the Record pleaded *sub pede Sigilli*: So an Excommunication must be pleaded under Seal of the Ordinary. 36 *Eliz.* *Hulst contra Hulst*. Yet about 4 *Car.* a Demurrer, because excommunicated, was over-ruled *inter Plumptre and Headlam*.

That a Demurrer, because of a former Dismission, must be upon Oath. *Vide Broke contra Smith*, 36 & 37 *Eliz.*

The Husband alone cannot demur for his Wife, by the Opinion of the Court. *Inter Sturling and Green*, 36 *Eliz.*

A Demurrer was, because *Cestuy que Vie* was not shewed to be in Life; and the Demurrer was over-ruled not to be good. *Inter Victor and Read*, 37 *Eliz.*

A Demurrer was, because it concern'd the Queen's Title, proper for the *Exchequer*; yet it was over ruled, *Mich.* 33 *Eliz.* So *Biller contra Elliot*, a Demurrer, because the Matter was depending in the *Exchequer* before the Bill, over-ruled. 35 *Eliz.*

A Bill of Revivor was brought, which was to revive all the former Proceedings, and particularly the Order by Consent. The Defendant did demur to the Bill, for that it sought to revive that Order, whereas

Parol Agreement determin'd by a Bond.

A *Subpæna* is no Record, nor ought to be demurr'd, to.

For that the Bill was but a Preparation for an Action.

For Outlawry, or Excommunication upon Oath.

Because of a former Dismission.

Not by the Husband for his Wife.

Because of *Cestuy que Vie*.

Because the Bill was proper for the *Exchequer*, &c. Over-ruled.

A Demurrer because more was prayed to be reliev'd

than can be,

the Feme was a Party to it; and she being married since her Executorship, consequently her Consent to the Order of Reference was determin'd: And upon Debate, the Demurrer was allow'd. 1 *Chan. Cases* 77.

Simile.

For Discovery of Assets.

Parol Agreements determin'd by Bond.

Two Executors, and one excommunicated.

For that one Executor could not sue another.

Because of Outlawry.

Because of a Decree in the Exchequer.

Motion to have a Demurrer entered.

The Defendant demurr'd; 1st. Because the Relief sought was for more than the Security by Bond, and therefore not proper in Equity. 2^{dly}. For that, that Part of the Bill which was for Discovery of Assets was ill, because the Charge was not positive that Assets, or any Goods, came to the Defendant's Hands: And allow in both Points; *Pasch. 26 Car. 2. Davis against Curtis, 1 Chan. Cas. 22.* Here it is noted, That the Bond determin'd the Parol Agreement.

Two Executots were Plaintiffs, and one of them excommunicated; the other was severed, and the Defendant ordered to answer. *Hill. 39 Eliz. Tomes contra Vaughan.*

A Demurrer was, pretending that one Executor could not sue another; and over-ruled, because the Matter is meerly Testamentary. 20 *Eliz.*

The Defendant put in a Demurreer to the Plaintiff's Bill, because the Plaintiff was outlawed at the Suit of Strangers, yet ordered to answer. *Mich. 9 Jac. Skies contra Rawson.*

A Demurrer, because a Decree had been in the *Exchequer*; over-ruled, and decreed here in Presence of the Barons of the *Exchequer*. *Mich. 14 Car. Salter contra Bennet.*

Because the Defendant did not put in his Demurrer according to the Rule of Court, moved to have it entred; but denied in 14 *Car. inter Osborne and Pagett.*

Precedents of Demurrers, &c. *Viz.*

The several Demurrer of the Right Honourable Ch. Earl of M. one of the Defendants to the Bill of Complaint of J. C. Complainant.

THE said Defendant by Protestation, not confessing or acknowledging all or any of the Matters or Things in the said Complainant's Bill of Complaint to be true in such Manner and Form as the same are therein and thereby set forth and alledged; saith, He is advised by his Counsel, That there is no Matter or Thing in the said Bill of Complaint contained, good and sufficient in the Law whereby to call this Defendant in question in this Honourable Court for the same: But that there is good Cause of Demurrer thereunto; For that it appears by the Complainant's own shewing, in and by his said Bill, That the Scope and End thereof is for the Complainant (as being Administratrix of the Goods and Chattels of *R. C.* deceased, with his Will annex'd, unadministred by his Executors therein named) to be relieved touching a Lease or Term of One and twenty Years, of a Messuage and certain Lands in the Bill mentioned, supposed to be demised by *E. F.* unto the said *R. C.* deceased, bearing Date the . . . Day of, &c. for such Term as aforesaid, to commence from and immediately after the Decease of one *E. M.* in the Bill named, then Tenant in Possession of the Premises, and to charge the Lands with 400 *l.* and Interest, alledged to have been the Consideration paid for the said Term, or to be answered out of the Lands and the Profits thereof, for one and twenty Years as aforesaid: To which said several Matters, and all other the Things in the said Bill contained, this Defendant doth demur, and for Cause of Demurrer, *sheweth*, That it appeareth of the Complainant's own shewing, That the said *E. M.* died in or about the Year 1661. and that the said Term or Lease touching which he seeks Relief, expired in or about the Year 1689. And therefore inasmuch as the Land was not, nor is not any way chargeable with or

A Demurrer
for several
Causes.

For that the
Lease where-
by the Lands
were charge-
able was ex-
pired.

The Defendant not accountable thereupon. The Lease surrendered.

Length of Time.
No Equity shewn against the Defendant.

A Demurrer for want of proper Parties.

liable unto the Plaintiff's Demands, either in Law or Equity, after the Expiration of the said Lease: Nor is the Defendant, for ought appears by the Bill, any ways answerable or accountable in Equity for any Profits of the Premises taken during the said Term of One and twenty Years; and therefore it is reasonable to presume, that the said Lease was surrendered or delivered up to the Executors of the said R. C. it appearing of the Complainant's own shewing, that the same long since came to the Hands of W. E. and A. F. in the Bill named, or one of them, who then claimed to have an Estate and Interest in the said Lands and Premises, and entred and took the Profits thereof: And forasmuch as a Demand of this Nature, especially after so great a Length of Time as aforesaid, ought not to be countenanced in this Honourable Court, and the said Bill containing in it no Equity against this Defendant; this Defendant therefore, for all the said Causes, and for several other Defects, and manifest Imperfections of the said Bill of Complaint, doth demur in Law to the said Bill; and abides by the Judgment of this Honourable Court, whether he shall be enforced to make any other or further Answer thereunto, and prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained.

T. Vernon.

THE said Defendant by Protestation, &c. for and by way of Demurrer thereunto, saith, That the Complainant in and by her said Bill, endeavours to intitle her self to several Messuages, &c. in the Bill mentioned, as one of the Daughters and Coheirs of F. H. in the said Bill called F. N. who was one of the Daughters and Coheirs of R. W. in the Bill named, deceased; and prays to have an Account of the Rents, Issues and Profits of the Premises ever since the Death of her said Mother, and to have the Deeds, Evidences and Writings discovered and brought into Court, or deposited in other safe Hands, for the Benefit of the said Complainant, and F. H. her Sister, in the Bill called F. N. the other Daughter and Cohier of the said F. H. deceased. To which Bill this Defendant doth demur, and

and for Cause of Demurrer, saith, That it appears of the Plaintiff's own shewing, that the said *F.* called in the said Bill *F. N.* is Daughter and Coheir with the Complainant of the said *F.* called in the said Bill *F. N.* deceased, and is equally intituled with the Complainant (if any Title she hath) and who is now living, and may hereafter call this Defendant to an Account under the same Pretences of Title as the Complainant now doth; whereby this Defendant is like to be put to a double Trouble, Charge and Vexation, which might have been determin'd by this Suit in case the said *F.* the Complainant's Sister, the Coheir with her to the Estate in question, had been a Party, Complainant or Defendant to the said Complainant's Bill, as she ought to have been: Wherefore, for that the Complainant's said Sister is not made a Party to the said Complainant's Bill, and for divers other Errors and Imperfections in the said Bill appearing, this Defendant doth demur in Law thereunto, and humbly demands the Judgment of this Honourable Court whether, &c.

THE said Defendant by Protestation, &c. The Complainants said Bill being exhibited against this Defendant, in order to recover two several Legacies of 10 *l.* apiece, pretended to be given to each of the Complainants by the last Will and Testament of one *T. B.* deceased, bearing Date, &c. And they by their said Bill setting forth, That the said *T. B.* being seised in Fee-simple to him and his Heirs for ever, of a Messuage or Tenement, with its Appurtenances, lying and being in the Parish of *H.* in the County of *M.* by Purchase from one *M. K.* his Mother-in-law; and being so seised, made his last Will and Testament in Writing, bearing Date as aforesaid; and thereby did give and bequeath to the said Complainants, and to each of them, the Sum of 10 *l.* to be paid to them respectively out of his said Messuage or Tenement in *H.* aforesaid, after the Decease of *E. B.* his Wife, and *M. K.* his Mother-in-law; and that soon after the said *T. B.* died seised of the said Premises, and that this Defendant purchased the same, and had Notice of the last Will and Testament of the said *T. B.* and of the Le-

Anorher Demurrer for want of Parties.

gacies thereby bequeathed to the Complainants; and that the said *E. B.* and *M. K.* are both dead, and that the Legacies of 10 *l.* apiece are due to the Complainants, and that this Defendant ought to pay the same to the Complainants, he having purchased the said Premises which were chargeable with the said Legacies: *Whereunto* this Defendant doth demur, and for Cause of Demurrer, saith, That the Complainants said Bill being exhibited against this Defendant for the said Legacies, as Purchaser of the said Premises, pretended by the said Bill to be charged with Payment of the same; the same Complainants ought, as this Defendant is advised, to have made the Heir at Law to the said *T. B.* a Party, and Defendant to the said Bill; For that the Heir at Law may have paid off and discharged the said Legacies, or otherwise have satisfied the same to the Complainants, and to each of them: And the said Heir at Law may have some Release or Releases, or other Discharges for the same, which he might have pleaded in Bar to the Complainants Demand of the said Legacies, or otherwise might have made it appear to this Court that the said Legacies, nor either of them, are not now due to the Complainant; and more especially, for that it does not appear by the Complainants said Bill, that the said Premises which descended to the Heir at Law, are chargeable with the said Legacies by the said last Will and Testament of the said *T. B.* And for farther Traverse of Demurrer, this Defendant doth say, That the said Complainant ought, as this Defendant is advised, to have made the Executors or Administrators of the said *T. B.* a Party or Parties to the said Bill, who for ought does appear by the said Bill, may have paid the said Legacies out of the Personal Estate of the said *T. B.* in case of the said Premises, and may have taken some Release or Releases, Discharge or Discharges for the same; and might, if they had been Parties to this Bill, have pleaded the same in Bar to the Complainants Demand thereof by their said Bill; which Release or Releases, Discharge or Discharges, this Defendant can take no Benefit of: But the Complainants will have their Legacies twice paid them, for ought appears by their

Traverse.

their said Bill: Wherefore, for that the Heir at Law to the said T. B. is not made a Party to the said Bill, and for that the Executors or Administrators of the said T. B. are not made Parties to the said Bill, and for divers other Causes and Imperfections in the said Bill, this Defendant doth demur in Law thereunto, and humbly demands the Judgment of this Honourable Court, &c.

THE said Defendant by Protestation, &c. For and by way of Demurrer thereunto, saith; That the Complainant by her Bill (as this Defendant is advised) endeavours to entitle her self to a Sum of Money due upon a Bond pretended to be entred into by this Defendant to R. B. her late Husband, deceased; and suggests for Equity, that the said Bond was burnt in the late Fire that happened in *Southwark*. To which this Defendant demurreth, and for Cause of Demurrer saith, That the Complainant hath not by her said Bill sufficiently entituled her self to the Money due upon the said Bond (in Case any such Bond there ever was, which this Defendant doth in no sort admit;) for that the Complainant doth not by her Bill set forth, That Letters of Administration of the Estate of the said R. B. were granted unto her under the Seal of the Spiritual Court; and for that she doth not proffer to produce the same so under Seal to this Court, nor refer her self thereto; and for that the said Bill doth not contain any Equity, for that the said Complainant hath not made Oath that the said Bond is burnt or lost, as by the Rules and constant Practice of this Court she ought to have done: Wherefore, and for divers other Errors and Imperfections in the said Bill appearing, this Defendant doth demur in Law thereunto, and humbly demands the Judgment of, &c.

A Demurrer for not setting forth Letters of Administration, and not making Oath of the Loss of a Bond.

THE said Defendants by Protestation, &c. and for Demurrer thereunto, they say, That there appeareth no Matter of Equity charged in the said Bill, for such Matters as the Complainant seeks Relief

A Demurrer for that the Bill charges this Defendant with

several Promises for soliciting Causes in this Court, and for Protection given the Defendant against Treasons, and other undue Practices.

thereby :

thereby: But that the said Bill is exhibited to vex perplex, and charge these Defendants, without any just Ground or Cause; for that he the said Complainant may have and take his Action at Law against these Defendants, for all and every the Matters and Things he complains of, in and by his said Bill of Complaint; and may thereupon recover what he pretends to be due to him upon any the special Agreements by him pretended, and Promises suggested to be made by this Defendant *H. D.* for Recompence for any the Matters and Things by him set forth in his said Bill: And these Defendants for further Demurrer to the said Bill, say, That the said Bill is not only void of Equity, but, as these Defendants are advised, full of scandalous and disgraceful Charges and Suggestions against these Defendants; as, that this Defendant *H. D.* is indebted or obliged to him the said Complainant for his Protection or Safety from divers Treasons, and other undue Practices by him the said Defendant, in and by the said Bill suggested to have been committed: Whereas this Defendant is altogether guiltless thereof, and was never, nor could, nor can be therewith charged. And also with charging the said other Defendant *E. D.* with deceiving him the said Complainant of several Sums of Money, which (if any such Thing were) these Defendants say he hath a more legal Remedy to take against these Defendants for the same, than by such Allegations in his Bill in this Honourable Court: For which said Causes, and divers other Errors and Imperfections in the said Bill appearing, these Defendants do demur in Law, &c.

A Demurrer to a Bill that seeks to be relieved against a Bond entred into by the Plaintiff to another; to which the Defendants, and one *J. B.* were Witnesses, and confederated with the Obliges to obtain the same.

THE said Defendants say, and either of them saith, That if all the said Complainant's Bill of Complaint (as against these Defendants, or either of them) were true, as the same is not; yet of the Complainant's own shewing, there is not any Cause, or Colour of Cause therein contained, why the said Complainant should complain against, or sue these Defendants, or either of them, in this Honourable Court, or in any other Court of Law or Equity; neither is

there

there any Matter or Thing charged in the said Bill of Complaint against them these Defendants, or either of them, whereupon this Court can proceed to make any judicial Order or Decree against them these Defendants, or against either of them: For if it were true, (as it is not) That *R. S.* deceased, in the said Bill named, did take Security of *W. B.* in the Bill also named, by Bond, Bill, or any other Writing of the said *W. B.* for the Sum of 50 *l.* in the said Bill specified, or in any other greater Sum, and arrested the said *W. B.* upon the said Bond or Bill, and imprison'd him in the *Marshalsea*, where he yet remains a Prisoner at the Suit of the said *W.* And if it be also true, as the same is not, That *L. K.* one of the Defendants, in the Bill also named, did write the said Bond, Bill, or other Writing; and that he the said *L. K.* and these Defendants, were Witnesses to the sealing of the said Bond or Bill, &c. Then these Defendants, and either of them, saith, That the said Complainant of his own shewing is not, nor any ways can be wronged or prejudiced by Reason of these Defendants being Witnesses to the said Bond, Bill, or any other Writing; neither have or hath these Defendants, or either of them, committed or done any unlawful Act or Thing therein, whereby the said Complainant should need the Aid of this Honourable Court against these Defendants, or against either of them, or whereupon this Court can ground any judicial Order or Decree: For which Causes, and for that there is no other Matter or Thing charged in the said Bill of Complaint against these Defendants, or against either of them, saving that they these Defendants are thereby supposed to be Witnesses with the said *L. K.* to some Bond, Bill, or other Writing; and for that the said Bill of Complaint containeth no Matter of Equity against these Defendants, or against either of them: Therefore these Defendants, and either of them, doth demur and abide in Law upon the Insufficiency of the said Bill of Complaint; and do, and either of them doth humbly demand the Judgment of this Honourable Court, &c. *Allowed.*

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Note.

The Demurrer of G. D. and B. his Wife, to the Bill of Complaint of T. K. Complainant.

A Demurrer for that it was partly an Original, and partly a Bill of Revivor, no Process prayed to revive, &c.

Also a former Dismission of Part.

The Demurrer was allowed, &c.

Demurrer for that the Bill contains several and distinct Matters against several and distinct Persons, and drawn to unnecessary Length, &c.

FOR Demurrer thereunto, these Defendants say, They are advised the said Bill, exhibited by the said T. K. is such, that they are not by the Justice of this Honourable Court requirable to answer unto the same, for the many Imperfections therein appearing, and more especially, for that the same appearing in it self to be partly a Bill of Revivor, and partly an Original Bill, there is not any Process prayed, that the same, or any Part thereof should be revived; so that that Part thereof that should be revived, cannot be revived, as these Defendants are advised for the Reasons aforesaid, it cannot; then consequently as they are also advised, the other Part thereof need not to be answered, for that it is not self subsistent, but merely dependent, and consequential upon that which should have been revived. And these Defendants farther say, as they are advised, there are other Defects in the said Bill, for which these Defendants ought not to be compelled to answer the said Bill, as particularly for that it is therein expressed, That as against one of the Defendants, viz. A. C. for 1000*l.* the Bill was dismiss'd, yet that also, as they are advised, is prayed to be revived; and farther, for that the Complainant, as they are advised, hath not well entitled her self, or well set forth her Title to the Estate by her, in her Bill mentioned to be decreed, nor derived her Title well from the Persons mentioned to have obtained the said Decree; for all which Causes, and for many other Defects in the said Bill appearing, these Defendants do demur in Law thereunto, and humbly demand the Judgment of this Honourable Court, if thereunto they shall be requir'd to make any other or further Answer, &c.

The joint and several Demurrer of W. B. Esquire, and J. K. Gen. two of the Defendants, to the Bill of Complaint of T. G. Gent. Complainant.

THESE Defendants by Protestation, &c. say, That they are advised by their Counsel, That the

Com-

Complainant's said Bill is insufficient, and to which, by the Rules of, and Justice of this Court, they these Defendants, or either of them, ought not to be compelled to make or give any Answer, and for Cause of Demurrer thereunto, these Defendants say, That the said Bill containeth in it self several and distinct Matters against several and distinct Defendants, which have not any Relation or Reference, the one to the other, whereby the said Bill is drawn to a great and unnecessary Length of above 120 Sheets of Paper, and these Defendants, altho' but very little concerned therein, are thereby enforced to take out a Copy of the said Bill, and if these Defendants should also be enforced to make Answer thereunto, they must (if the Cause shall descend to Issue) be put to unnecessary Charges and Expences in taking out Copies of the Pleadings and Proofs which shall happen in this Cause, and which concern the other Defendants only, and whereunto these Defendants have not Relation, nor are any Way pretended or supposed by the Bill to be concerned, which is against the constant Practice and Justice of this Honourable Court, and if admitted, would prove to these Defendants an extraordinary Charge and Vexation, wherefore, and for divers other apparent Errors, Imperfections, and Incertainties in the said Bill of Complaint contained, these Defendants do demur and abide in Law, and humbly Demand the Judgment, &c.

The Defendant by Protestation not confessing or acknowledging all or any the Matters or Things in the said Bill of Review contained, other than what is contained in the Decree upon Record, which the Bill seeks to reverse, to be true, in such Manner and Form as the same are thereby set forth and alledged, saith, That by the constant Rules of this Court, no Bill of Review ought to be admitted to alter or change Matters decreed, but only *either for Error in Law appearing in the Body of the Decree, as it is drawn up and enrolled, or for new Matter arisen since the Decree, or such Matter of which the Plaintiff in the Bill of Review could not have Notice at the Time of the Decree;* and therefore, and for that the Matters assigned by the Bill for Cause of Reversal of the said Decree, are neither any Error in
Law

A Demurrer
to a Bill of
Review.

Law apparent in the Body of the Decree, nor any such new Matter as aforesaid, but are only a Pretence of misjudging in Matter of Form only, and not in Point of Right, and for that the Pretence of the Bill for decreeing for a Defendant against a Plaintiff on his own Bill, and the Pretence of the Abatement of the Suit before the Decree past, are only Exceptions of Formality, and for that the other pretended Error in miscastidg, in Case any such there be, is amendable by a Motion; and for that the said Bill of Review contains in it no Equity, this Defendant doth demur in Law thereunto, and humbly insists upon it, that the said Decree ought not for any of the Causes assigned by the Bill to be reviewed or reversed, being for ought appears, well grounded, and humbly demands the Judgment of this Honourable Court, &c.

Allowed.

Other Causes
of a Demur-
rer to a Bill
to review or
reverse a De-
cree.

This Defendant by Protestation, &c. and the Scope of the Complainants being, as this Defendant is advised, to review a Decree made in this Court, wherein this Defendant was Complainant against the now Complainant then Defendant, by which it is decreed, That the Sum of 6000 l. &c. (reciting the Substance of the Decree) and whereby a perpetual Injunction was granted for stay of all Suits at Law, touching the Rent-Charge of - - - - in the said Decree mentioned; This Defendant doth demur unto the said Bill of Review, and for Cause of Demurrer saith, That by the constant settled Rules of this Court, no Bill of Review ought to be admitted, to alter, change, or explain any Decree of this Court enrolled, unless there be either *manifest Error in Law appearing in the Body of the said Decree, as it is enrolled, or for some new Matter of Fact discovered since the Decree pronounced, and that only by Leave of the Court on an Affidavit made of the Truth of that Matter,* and this Defendant doth insist, That it doth not appear in the Body of the said Decree, as the same is signed and enrolled, and is of Record in this Honourable Court, that there are or is any Error or Errors apparent in the said Decree, whereby, or by Reason whereof, the said Decree can or ought to be reviewed or reversed, and for that the pretended Errors in the said Bill of Review set forth, are not Errors in Law appearing in the Decree, but

Alle-

Allegations and Suggestions of Matters not contained in the said Decree, and for that there is not any such new Matter alledged, or Affidavit made, and Leave obtained from this Honourable Court for bringing such Bill of Review as is warranted by this Honourable Court in this Case, therefore this Defendant doth demur in Law to the said Bill of Review, and doth humbly insist upon it, that the said Decree, for ought appears, is well grounded, and doth humbly demand the Judgment of this Honourable Court, &c.

Another Demurrer for divers Causes.

This Defendant by Protestation, &c. saith, That the Complainant pretending by his Bill, That one *T. B.* did devise certain Lands, &c. in the Bill particularly named, unto one *J. T.* the Complainant's Father, deceas'd, for sixty Years, at 23*l.* Rent, and that his Father dying thereof possessed, Administration of the Goods and Chattels of his said Father were granted to *E. T.* the said Complainant's late Mother, and that she shewing an Intention to marry this Defendant, and to dispose of her Estate for the good of her Children before her Marriage, did by Indentures dated, &c. assign over all her Estate, &c. therein to *R. T.* and *C. J.* for the Residue of the said Term in trust for her self for Life, and after in trust for the Complainant, and that the Complainant should receive yearly, during her Life, 10*l.* and that the said *E.* being dead, and this Defendant having got the said Deed into his Hands, conceals the same, and refuses to suffer the Complainant to enjoy the said Land, or to pay the said 10*l.* *per Annum* according to the Trust, and to discover the Date and Contents of the Deed, and the Witnesses Names, and in whose Custody it is, &c. is the Scope of the Bill, to which Bill, and all the Charge therein contained, this Defendant doth demur, and first, for that the Plaintiff seeks the Custody of a Deed, by which he pretends Title to the sole Rent of the Remainder of a Term for ninety-nine Years, assigned by his Mother to *R. T.* and *C. J.* which if any such Deed were, it did properly belong to the Complainant or to the said Trustees, and most probable to be in their, or some of their Custody, and not in this Defendant's, who appears by the Complainant's own shewing, to be a Stranger thereunto, it being
made

Of Demurrers and Answers.

made by his late Wife before her Marriage, and hath not made Oath, (as by the Course of this Honourable Court he ought) That the said Deed, of which he seeks a Recovery and Relief thereupon, is not in his own Custody, or of some other Person or Persons in Trust for him, or within his Power: And so for ought appears to this Court, doth needlessly vex this Defendant by this Suit, as he hath done by two former Bills, which are dismiss'd by the Plaintiff himself, touching this Lease; as also for that he seeketh by his said Bill to be relieved concerning a Trust created for his Benefit, and hath not made the Trustees Parties to the said Bill, but hath exhibited his said Bill on purpose to oppress this Defendant by this Suit, in which this Honourable Court cannot, as this Defendant is advised, make any Decree for want of proper Parties; for which said Causes, and other Imperfections in the said Bill, this Defendant doth demur, and humbly demand, &c.

The foregoing Precedents may be sufficient to shew the Nature of Demurrers as separated and distinguished from Pleas or Answers; and having in the beginning of this Chapter treated of *Pleas* and *Demurrers* jointly, I shall only add a few Words touching *Answers* and *Demurrers* jointly, and give a Precedent or two thereof, and then conclude this Chapter.

Of Answers and Demurrers jointly.

Where one Defendant's relative Answer is sufficient.

Where, in a joint and several Answer by *A.* and *B.* if *A.* for himself answers, and *B.* says he hath perused the Answer of *A.* and believes it to be true, supposing *B.* charged with nothing of his own Knowledge, such a relative Answer is sufficient. *Hard. Rep. 105. inter Walker and Norton.*

Aliter if a part.

But 'tis otherwise where the Defendants answer severally each apart. *Ibid.*

Where, upon a Custom for Tithes of Conies the Defendant

In a Bill for Tithes of Conies by Custom, the Defendants by Answer denied the Custom, but did not discover how many Conies they killed, nor the Value generally denied the Custom without further Discovery, and good.

lue thereof; yet *Pasch. 13. Car. 2. inter Randal & Head, Hard. 188. per Cur'* it was resolved well enough, (the rather because the Demand was against common Right) for there being a full Answer given to the Thing in Demand, till that be tried, the Defendants are not bound to discover; and if it should be other-ways, the Defendant by a feigned Suggestion might be forced to discover any Thing; but in such Case if the Matter be found against the Defendant, he shall after be examined upon Interrogatories. Note.

But where there is no such great Inconvenience, as upon a Bill against an Executor to discover Assets, he must answer, though he denies the Debt, because it concerns the Act of another, and Assets are presumed, *per Cur', Hard. 188. Pasch. 13 Car. 2.* Yet Executor must answer to Assets, tho' he denies the Debt.

Where a Defendant before Replication was allowed to amend her Answer. *1 Chanc. Cases 29. Chute against the Lady Dacre, Mich. 15 Car. 2.* The Defendant having mistaken her self in her Answer, as was alledged, having therein sworn something which was found by her afterwards to be otherwise; It was alledged by her Counsel, and *Affidavit* made by her self too for that purpose, That those Matters untruly set forth were added in the Margin of the Draught, after she had perused it; and so she was thereby surpriz'd. And it was alledged, That no Replication was filed *prout* Certificate. And *Affidavit* of Notice of this Motion to the other side was read; But the Plaintiff making no Defence, it was *ex parte*, on the Defendant's Motion, ordered, That she be at Liberty to amend her Answer in the said Matters mistaken. And it was said, That like Liberty had been given to a Defendant to amend his Answer before Replication, in a Case between *Chettle and Chettle*, in the Lord *Coventry's* Time. Answer, when amendable, and for what.

Crisp against Nevil, Mich. 16 Car. 2. The Defendant excepted to the Answer, and the Exceptions were referred; The Master certified the Answer insufficient in the Points excepted to; then the Defendants fully answer to the Charge of the Bill. But in truth the Exceptions were longer than the Bill. The Master upon a Reference to the second Answer, reports the excepting, is to answer all the Points excepted, tho' the same exceed the Bill. When the first Answer is reported insufficient, the Defendant, if he answer again without Ex-

Q

Answer

Answer insufficient in the Points excepted unto. The Defendants except unto the Report, and upon Debate the Defendant's Counsel insisted, They had answered well to the Bill, and that they ought not to be put to answer any Matter but what is in the Bill. But the Plaintiff's Counsel insisted, That inasmuch as the Defendants did not except against the first Report, but had since answered, they had admitted they ought to answer to all the Matters of the Exception: And so it was ruled.

Where the Plaintiff's own former Answer shall not be suffered to be read against him. And Relief was had of a Debt, which the Plaintiff had sworn was satisfied before.

That if a second Answer be insufficient, Process shall go on where it was before.

Former Bill depending, yet answer the second.

Jones Ar. contra Lenthall & Uxor, Mich. 21 Car. The Bill was to be relieved for a Debt owing by Bond from Sir James Stonehouse, to whom the Defendant the Lady was Executrix; which Debt and Bond the Plaintiff in his Answer to a former Bill had sworn, was fully satisfied to him, but that was to avoid a Sequestration of the Debt, as was alledged; and the Master of the Rolls (though that Answer was set forth in the Defendant's Answer in this Cause) would not suffer the Answer to be read against the Plaintiff, and so decreed the Defendants to satisfy the Debt. 1 Chan. Cas. 154.

Mich. 26 Car. II. Anonymus, 1 Chan. Cas. 238. The Lord Keeper declared for a Rule, That if after Process of Contempt the Defendant put in an insufficient Answer, and so reported, the Plaintiff should not as formerly, begin with Process at the *Subpœna*, but should go on to the Attachment with Proclamation and other Process, as if the Answer had not been put in. Note, An Order was made in *Easter Term*, 1676. to the like Effect; and that if the Defendant do not in eight Days put in a perfect Answer, Process of Contempt; and the Plaintiff may proceed on any former Process of Contempt, notwithstanding Costs paid. See *Ordines Cancellariae* 292.

Crofts against Wortley, 26 Car. 2. A former Bill depending was pleaded in Bar of a second, but though both Bills were of the same Matter and Effect, the latter had some new Matter. Ordered, That being the Plea was good, the Plaintiff should pay the usual Costs of a Plea allowed. But the Defendant to answer the second Bill, and the former Bill dismiss'd with 20 s. Costs. 1 Chan. Cas. 241.

Note,

Note, In this Case it was ruled, That though the Plaintiff need not serve the Defendant with a *Subpœna* to make a further or better Answer, yet he must then give a Rule to the Defendant's Clerk, or a Copy of the Order.

A Decree being past, the Defendant to a Bill to execute the Decree, set forth a Parol Agreement in Bar, to which Answer the Plaintiff demurs, and the Chancellor allowed the Demurrer: For though the Agreement were subsequent to the Decree, the Decree shall precede: And if the Defendant will have Advantage of the Agreement, let him bring in an Original Bill; for if he have Advantage by it in a way of Defence, one Witness may serve his Turn: But to an Original Bill here, if he in his Answer deny the Agreement, one Witness will not convict him. So that by this Way of Answer, the Plaintiff should lose the Benefit of his Answer. 2 Chan. Cas. *Wakelin contra Walihal.* Mich. 21 Car. 2.

A verbal Agreement no Stay to Execution of a Decree.

One Witness not sufficient to a Denial by an Answer.

3 Chan. Cas. 123. *inter* Earl of Bath and Montague, That no Decree can be made against a Man's Answer upon the Proof of one Witness.

Simile.

Precedents of Answers, Pleas and Demurrers jointly.

The Answer and Demurrer of D. G. Defendant, to the Bill of Complaint of E. P. Complainant.

ALL Advantages of Exception to the Incertainties, &c. of the said Bill of Complaint being now and at all Times hereafter saved and reserved to this Defendant, for Answer to so much thereof as this Defendant is advised is material for this Defendant to make Answer unto, he answereth and saith, That by the untrue Insinuations and Suggestions of the Complainant, who persuaded this Defendant, That this Defendant had a good Title to a considerable personal Estate, which was late one W. W.'s, by Vertue of a Will made by the said W. W. lately deceas'd; and the said Complainant then told this Defendant, that if this Defendant would imploy him the said Complainant as his Chancery-Clerk, he would engage this

An Answer to Part, and a Demurrer to Part of the Bill, being for a Matter under 10 l. and therefore beneath the Dignity of the Court to take Cognizance of.

Defendant should recover a very considerable Sum of Money; and this Defendant giving Belief to the said Promises and Assurances of the Complainant, did employ him as this Defendant's Clerk in Court, and did promise the said Complainant to pay him all such Fees as should be due to him, and also all such Sums of Money as he should expend on this Defendant's Account in the said Cause, after which the said Complainant did direct and bring a Bill in this Honourable Court in the Name of this Defendant against the Persons named in the Complainant's Bill, as the said Bill sets forth. To which Bill the said Parties put in their Answer: After which this Defendant was advised, by Reason of Defects and Errors, to move to have the said Bill dismiss'd with 20 s. Costs, which upon Motion in this Honourable Court was dismiss'd accordingly. So that this Defendant had no Advantage by the said Suit, but spent his Money and Time to no Purpose. And this Defendant further saith, That from Time to Time this Defendant did pay to the said Complainant all Sums of Money expended by him in prosecuting the said Suit, as also all Fees that were demanded by, or due to him: And the Complainant was so far from expending his own Money, or having any due to him in prosecuting the said Cause, that this Defendant, at the Request and Intreaty of the Complainant, was forced to let him have Monies always before-hand to prosecute the said Suit, he being (as this Defendant believes) not able to defray the Charges with his own Money; so that this Defendant verily believes he paid the said Complainant more than upon a just Account would appear to be due to him; yet nevertheless the said Complainant, to vex, trouble and put to Charges this Defendant, did bring an Action in the Sheriff's Court in London for 12 l. as due for his Fees and Expences in the said Suit: To which this Defendant appeared, and the Complainant was non-suited. And since the said Complainant became non-suited, as aforesaid, this Defendant hath received from him a Note or Bill under his Hand, by which he demands of this Defendant 6 l. 2 s. 6 d. and under the said Bill or Note is a *Memorandum* that he had received the Sum of 1 l. 4 s. 6 d.

so that upon the Balance there remained to the said Complainant of the said pretended Demand but 4*l.* 18*s.* A Copy of which said Bill or Note is annexed to this Defendant's Answer, and which he prays may be taken as Part of his Answer, the said Bill or Note being in this Defendant's Custody, and ready to be produced, &c.

And whereas the said Complainant by his said Bill of Complaint *here* demands the Sum of 15*l.* 13*s.* 10*d.* or thereabouts, on his Bill delivered to this Defendant, and for that by his Bill or Note so delivered as aforesaid, there is not pretended to be due to him more than 6*l.* 2*s.* 6*d.* and that Part thereof is satisfied, as by the same Bill or Note appears; so that there remains as pretended due only 4*l.* 18*s.* therefore this Defendant doth demur to the said Complainant's Bill, and for Cause of Demurrer saith, That the Plaintiff's Bill referring to such Bills or Notes as have been delivered to this Defendant, it appears there is not due to him from this Defendant above the Sum of 4*l.* 18*s.* which being a Cause of so small a Value and Consequence, it is beneath the Dignity of this Honourable Court to take any Cognizance thereof; and therefore, and for the Reasons aforesaid, and for divers other Errors and Imperfections in the said Bill of Complaint, this Defendant doth demur thereunto, and humbly demands the Judgment, &c.

The Demurrer and Answer of A. B. and C. D. Gen. two of the Defendants, to the Bill of Complaint of E. F. G. H. and L. M. Complainants.

THES E Defendants by Protestation, &c say, A Demurrer They are advised by their Counsel, that the and Answer, Complainants by their Bill do seek to have an the Demurrer being for making Parties, not concerned, nor shewing any Title, and unnecessary Length of the Bill.

Account of the personal Estate of *K. F.* in the Bill named, who was one of the Daughters of *J. F.* Esq; deceased, in the Bill also named, and also to have Satisfaction of a Portion of 1500*l.* provided for her the said *K.* as is pretended by the said Complainants by her said Father to be raised out of certain Lands and Tenements by Vertue of a Deed and Conveyance pretended to be made by the said *J. F.* near sixty Years since, and likewise to have an Account and Satisfaction

tion of the Rents and Profits of all the real Estate which was the said *J. F.*'s, and whereunto the said Complainants pretend the said *K.* his Daughter had a Right and Title some Years before his Death by Survivorship, and claims an eighth Part to her and her Heirs, as a Coheir; and yet the said Complainants, or any of them, do not alledge or pretend themselves, or any of them, to be Executors or Administrators of the said *K.* nor Purchasers under her, but the said Complainant *E. F.* in the said Bill alledgeth, and pretends that the said *K.* was indebted to him in the Sum of 300*l.* And the said Complainant *G. H.* in and by the said Bill alledgeth, and pretends the said *K.* was indebted to him in 350*l.* but neither of them do set forth how their said Debts became due, nor when, nor whether upon any Specialty or not. Nor do they the said Complainants *F.* and *H.* or either of them, so much as pretend they have any Deed or Conveyance, or Statute, Judgment or Recognizance, or any other Assurance or Security, which may be charged or chargeable upon any the real Estate whereunto the Complainants pretend the said *K.* to have any Right or Title. And the said other Defendant *L. M.* sets forth only a voluntary Conveyance to him made by Dame *T. F.* in the Bill named, as another Defendant, before her Intermarriage with Sir *J. F.* of all the Lands, &c. which were her Father Sir *R. T.*'s, who, as is alledged, had formerly conveyed them to the said *T.* But the said *L. M.* doth not so much as alledge or pretend himself to be a Purchaser of the said Lands, &c. or any Part thereof, for any valuable Consideration, nor to have any other Claim thereunto, but only by the said voluntary Conveyance; and yet the said Bill being in Length above 100 Sheets of Paper, is exhibited against these Defendants, and above seventy other Persons, many of whom are concerned only as Tenants, some others as Purchasers for a valuable Consideration, and divers others as Agents, Solicitors, or Attornies, who have been employed in Defence of Suits in Law or Equity concerning any of the Premises. Which said Bill these Defendants are advised by their Counsel for the Causes and Reasons aforesaid, is very insufficient, and such as to which
by

by the Rules of this Court these Defendants ought not to make or give any Answer, other or otherwise than as herein after they have answered; and the rather for that the said Bill contains in it several and distinct Charges against the several Defendants which have no Relation or Coherence the one with the other, by which Means the said Bill is drawn to a great and unnecessary Length, as against these Defendants (wholly impertinent) who are charged only with a Combination amongst the other Persons named for Defendants, and yet they must be forced to be put to unnecessary Charge and Vexation, if they should be compelled to answer this Bill, which is against, and contrary to the Justice and Practice of this Honourable Court. And the principal Equity the Complainants pretend, is want of Writings, and yet they have not made any Oath of the Loss of such Writings as they ought to do; nor have the Complainants made to themselves any good Title, or doth the said Bill contain any Equity whereupon the Court can proceed to make or ground any Decree as against these Defendants. For all which Causes, and for divers other apparent Errors and Imperfections and Insufficiencies in the said Bill of Complaint appearing, these Defendants do demur in Law, and humbly demand the Judgment of this Honourable Court, Whether they shall be compelled to make any further or other Answer thereunto. And these Defendants for Answer to all the rest and Residue of the said Bill of Complaint not herein before demurred unto, do answer and say, That, &c.

Other general Causes of Demurrer assigned.

Want of Writings.

Answer to the Residue of the Bill.

The Demurrer, Plea and Answer of E. N. one of the Defendants to the Bill of Complaint of T. R. J. R. and W. R. Complainants.

THE said Defendant by Protestation. &c. saith, That the Scope of the Bill being to be relieved for, and to have and receive from the Defendants therein named the Sum of 270*l.* for the Arrears of 30*l.* per Annum Annuity thereby pretended to be due unto them as Executors of K. N. unto whom it is pretended, that Sir J. N. Father of the Defendant's late Husband

A Demurrer, Plea and Answer taken by Commission. Scope of the Bill.

Husband Sir *A. N.* did, together with the said Sir *A.* by Indenture dated, &c. convey, set over, grant, and confirm the said Annuity unto *W. N.* Husband of the said *K. N.* to hold to him, his Executors and Assigns, from the 24th day of *July* then next following, for and during the full Term of 99 Years, if the said *W.* and *K.* or either of them lived so long, payable quarterly, and leviabie by Distress on any of the Lands of the said Sir *J.* or the said Sir *A.* at the Choice and Election of him the said *W.* and his Assigns, and to make further Assurance; which Rent it is pretended was paid by the said Sir *J.* unto the said *K.* until the Year 1685. when the said Sir *J.* died, leaving his Estate, alledged to be about 2000*l.* *per Annum* settled by himself and the said Sir *A.* upon Trustees for Payment of his and the said Sir *A.*'s Debts, and all Annuities and Incumbrances whatsoever created by them; and which by subsequent Deeds pretended to be made between the said Sir *A.* and Trustees and the Defendants charged thereon, the said Defendants are made liable to pay; and that afterwards when the said Annuity was 180*l.* in Arrear, the said Sir *A.* was arrested, and as the Plaintiffs have heard and believe, gave some Bond or other Security left in the Hands of Mr. *F.* the said *K.*'s Attorney, or some other for the said *K.*'s Use, as a further Security for Payment of the same. But that the said *F.* being dead, the Plaintiffs know not what is become of it, but have heard and believe the said Sir *A.* afterwards got and cancelled the same. And that afterwards in 1680. Sir *A.* exhibited his Bill here against the said Sir *H. N.* and the Defendant *L. N.* on whom as was thereby alledged, the said Sir *J.* had settled Lands to pay 10*l.* *per Annum* of the said Annuity, and also against the Defendant *W. N.* and one *J. N.* since deceased; and the said Sir *J.*'s Executors and others to be relieved against, and to subject the said Sir *J.* to the Payment of the said Rents and Arrears, forasmuch as the said Sir *A.* did thereby alledge himself to be no other than a Surety for the said Sir *J.* and that he had the said Sir *J.*'s Promise for his Indemnity: But that upon the hearing, *viz.* the 11th of *June* 35 *C. 2.* the said Sir *A.* was relieved against no more than 10*l.* *per Annum* of the Annuity ever since the

Another Bill
recited.

the said Sir J. S.'s Death, which thereby the Defendant L. was decreed to pay, and free and discharge the said Sir A. thereof, this Court declaring (as by the now Plaintiff's Bill is alledged) That the said Sir A. should be charged with no greater a Proportion than 20 l. *per Annum* ever since the said Sir J. S.'s Death: And the now Plaintiff's Bill further alledging, That afterwards, *viz.* in 1684. the said K. died, whereby the farther Payment of the said Annuity ceased, and that then there was due the Sum demanded by the Plaintiffs Bill for Arrears, besides Costs, which by the same Bill the Plaintiff seeks to have with Damages, as likewise the Benefit of the said Decree made in the said Sir A.'s Cause. To so much of which said Bill as is not herein after pleaded and answered unto, this Defendant doth demur in Law; and for Cause of Demurrer shews, That if the Decree set forth in the Complainant's said Bill be such as the said K. could recover any Thing upon against this Defendant, the said Complainants ought to have sought their Recovery on the same by *Scire Facias*, and no other Course, they claiming in Privy as her Executors: But if thereon they could not recover that ways, this Defendant for further Cause of Demurrer further sheweth, That the said Complainants ought to do it by Law, and no other way, inasmuch as it doth not appear, that the Consideration for the said Grant was no other than natural Love and Affection, or something else not valuable, which in no Case was ever aided or assisted by this Honourable Court: Nor ought the said Complainants to have any Answer or Discovery to that Part of their Bill which seeks to know whether there was any such Grant of the said Annuity and Bond, &c. or other Security for securing the Arrears thereof, as in the said Bill is alledged, or what is become of the same; for that the said Complainants have not made the usual Oath, that there was any such Grant, Bond, &c. and that neither they nor either of them had the same, nor knew what was become thereof, unless the said Defendants or some of them had the same; and annex'd such their Oath to their said Bill, or filed the same in the Office for filing *Affidavits* of this Court, which is not done.

Demurrer for that the Suit ought to be revived by *Sci. Fa* or by Suit at Law, there being no valuable Consideration.

No Oath, &c. that the Bond was lost.

There-

An Executrix
not made a
Party:

Plea.

13 O.B. 21.
Cor. 2.

Therefore and for that though it appear of the Plaintiffs own shewing in and by the said Bill, that *J. N.* one of the said Sir *J.*'s Executors is dead, and that *A. N.* his Relict is Executrix, but is not made a Defendant, who, or one of them may have paid or otherwise discharged the Arrears of the said Annuity claimed by the Complainants, or by Answer might have set forth as much as would have been a good Discharge to this Defendant. Therefore this Defendant doth demur and abide in Law, and demands the Judgment of this Honourable Court, Whether he shall be compelled to give any Answer to somuch of the said Bill as is not herein after pleaded and answered unto. And to the rest of the said Bill not herein before demurred, and herein after answered unto, this Defendant pleads, and for Plea saith, That the said Sir *J. N.* having Power to charge his whole Estate with 4000*l.* and to dispose of the Fee of two Tenements called *Rome* and *Shute*, worth 120*l.* per Annum at least, did by Deed indented under his Hand and Seal, dated, &c. and made or mentioned to be made between himself of the first Part, and *Robert Fortescue, John Hale, John Northcot, John Quick, George Young, Esquires*, and the Plaintiff *John Rowe* of the other Part, declared, among other Things, That the said 4000*l.* and the said two Tenements called *R.* and *S.* should be subject to the Payment of all his Debts in general, whereof (if that which the Complainants by their Bill claim to be a juh debt) the same is the said Sir *J. S.*'s and none else, and comes in with that Trust. For this Defendant doth aver and believe, That the said Sir *J. A.* never had any Consideration directly or indirectly for joining with his said Father for securing of the same or any Part thereof. And for further Plea saith, The said Sir *J.* did afterwards in his last Will and Testament recite his Power as touching the said 4000*l.* and appointed the same to be paid to his Executors, and to *J.* his Grandson, and to his Son, and subject to his Debts, and gives the Fee of his said two Tenements to his said Grandson *J.* who being dead, the said Tenements did descend unto and upon *A. N.* Esq; as Brother and Heir of the said *J.* who is since also deceased without Issue, and *J. N.*

of

of . . . Esq; is his Heir, and one of the Trustees in the Deed before recited: And the said Defendant W. N. is Executor of the said A. and A. N. is Executrix of the said J. N. one of the said Sir J. N's Executors, and Devisee of the Inheritance of the said two Tenements: Neither the said J. N. the Heir of A. and J. the Devisee, nor the said A. the said J. the Devisee's Executrix, nor the said W. *quatenus* Devisee of the said two Tenements by the said A.'s said Will, were made Defendants, who might have paid the said Arrears claimed by the Plaintiffs, or otherwise be released or discharged of the same All which Matters so before pleaded, this Defendant avers are true: And to the rest, this Defendant for Answer saith, and denieth, Want of proper Defendants. That she knows or believes, that the said Sir A. did ever hold any of the Estate of the said Sir J. upon any Trust to pay his the said Sir J.'s Debts, or any of them. And lastly, this Defendant denies all Combination by the Bill laid to her Charge; but confesseth, That the said Sir A. N. is dead, and that she this Defendant is his Executrix; and that Sir F. N. in the Bill named, is Heir of the said Sir A. Without that, That any other Matter, &c. The usual Traverse:

Answer.

Hac Responsio & hoc Placitum capt' fuer per Sacramentum Defendentis super Sacrosancta Dei Evangelia: Et hec Moratio dicti Defendentis capta fuit sine Sacramento apud K. in Com' D. decimo Die Junii, Anno Regni Domine Annæ nunc Magna Brittannia Regine decimo tertio, coram nobis Commissionar' virtute Commission' dictæ Domine Regine nobis & al' direct'.

W. B.

D. G.

For Forms of Demurrers, &c. to Replications, see the precedent Chapter.

A Plea

A Plea of several Matters, &c.

Several Conveyances and Fines, and a Decree of this Court, pleaded in Bar to Part of the Complainant's Bill, and an Answer to the Residue.

THE said Defendant by Protestation, not confessing, &c. as to so much of the said Bill as seeks to make subject to the Complainant's Judgment, in the Bill mentioned, the Manor of *B.* and other the Lands, &c. in the said Bill mentioned to be lying, &c. and other the Manors and Lands named in the Decree herein after mentioned, or that endeavours to make the said Lands, &c. liable to the Judgment alledged to be entred into by *T. G.* the Defendant's Father, unto *J. G.* in trust for *J. B.* in the Bill named. These Defendants, for and by way of Plea, say, That *H. G.* Esq; deceased, late Grandfather of this Defendant *H. G.* did by his last Will and Testament in Writing, bearing Date, &c. amongst other Things, give and bequeath unto the Defendant *H. G.* 5500 *l.* and to *F.* this Defendant's Sister, 500 *l.* and to *G. A.* another of his Grandchildren, 5500 *l.* and to *E. A.* his Sister, 500 *l.* payable to this Defendant, and the said other Legatees, at their respective Ages of 21, or Days of Marriage, which should first happen; and in the mean time, to be imployed by the Executors for the best Advantage of the said Legatees; and of his said Will made the said *T. G.* and *E.* his then Wife, this Defendant's Father and Mother, Executors, and shortly after died; after whose Death, the said Executors proved the said Will, and took on them the Execution thereof: And the said *T. G.* knowing he was to secure the said Legacies to this Defendant, and the other Legatees; and one *T. S.* of and *H. K.* of being seised of the Manor of *B.* and Lands thereto belonging, in trust for *T. W.* Esq; and the Lady *A.* his Wife, by Vertue of an Indenture of Bargain and Sale inrolled in this Honourable Court, and bearing date, &c. made between *J. S.* of the one Part; and the said *T. W.* and the Lady *A.* his Wife, and *T. S.* and *H. K.* of the other Part: And the said *T. G.* having contracted and agreed with the said *T. W.* for the Purchase of the said Manor of *B.* and Lands belonging, by Indenture tripartite, dated, &c. made between the said *T. W.* the Lady *A.* his Wife, *T. S.* and

and *H. K.* of the first Part; the said *T. G.* of the second; and *T. L.* of the *Middle-Temple*, and *T. S.* junior, of the third: The said *T. S.* and *H. K.* by the Appointment, and at the Request of the said *T. W.* and *A.* his Wife, did demise, grant, bargain, and sell unto the said *T. L.* and *T. S.* junior, their Executors, Administrators and Assigns, all that the said Manor of *B.* with the Appurtenances, and all their Lands, &c. in *B.* to the said Manor belonging or appertaining; To have and to hold to the said *T. L.* and *T. S.* their Executors, Administrators and Assigns, from the Date of the said Indenture, for and during and unto the full End and Term of 300 Years, under a *Proviso* to be void if the said *T. G.* his Heirs, Executors, &c. should pay, or cause to be paid to the said *T. S.* the elder, and *H. K.* or either of them, their Executors, &c. 20 26 *l.* on the 16th, &c. then next, or to the same effect, (*prout the Indenture:*) And these Defendants for further Plea, say, That the said 20 26 *l.* was not paid to the said *T. S.* and *H. K.* or either, &c. according to the said *Proviso*; whereby the said Estate, and Term of 300 Years, became absolute in the said *T. S.* and *H. K.* and the same is since by several Conveyances and mean Assignments, come unto, and vested in *G. C.* of, &c. in trust for this Defendant *F. C.* and to protect his Purchase of the Premises herein after set forth, (*prout the several Conveyances and Assignments:*) And by Indenture of Lease and Release, bearing date, &c. and a Fine thereupon levied, they the said *T. W.* and also the said *J. E. S. T. S.* and *H. K.* at the Request, and by the Direction of the said *T. W.* and *A.* his Wife, did grant, alien, release and confirm unto the said *T. G.* his Hiers and Assigns, the said Manor of *B.* with all and singular the Appurtenances, and all Messuages, Lands, &c. To have and to hold unto the said *T. G.* his Heirs and Assigns for ever, or to that effect, (*prout the said Indenture:*) And these Defendants for further Plea, say, That by Indenture tripartite, bearing date, &c. made between the said *T. G.* of the first Part; *M. H.* Widow, of the second Part; *O. N.* Esq; and *W. T.* Gent. of the third Part; In consideration of a Marriage intended to be had and solemnized between the said *T. G.* and *M. H.* and in Consideration of 1000 *l.*

Part

Of Pleas and Answers.

Part of the Marriage-Portion of the said *M.* and divers other Considerations, the said *T. G.* did covenant before the End of *Hillary*-Term then next, to levy a Fine unto the said *O. N.* and *W. F.* and their Heirs, or to the Heirs of one of them; and which was levied accordingly, of the said Manor of *B.* and Premises, to the Use of *T. G.* for and during the Term of 60 Years, if he lived so long; and after the Expiration, or other sooner Determination of the said Term, to the Use of *O. N.* and *W. M.* and their Heirs, during the Life of the said *T. G.* upon Trust, to preserve contingent Remainders, and from and after his Death, then to the only Use and Behoof the said *M.* and her Assigns, for and during the Term of her natural Life, for her Jointure, with other Remainders over, (*prout* the *Indenture and Fine*;) And these Defendants for farther Plea, say, That afterwards, in or about, &c. the said *T. G.* and his said Wife, for a valuable Consideration, by Deed and Fine duly levied and executed, conveyed the said Manor, &c. to *J. P.* and *O. P.* for 2000 Years, under a *Proviso* of being void on Payment of 2000*l.* and Interest, (*prout* the *said Deeds and Fines*;) And the Defendant *H. G.* for farther Plea saith, That the said *T. G.* having also with Part of the Estate of the said *G. H.* purchased in the Names of *J. G.* Esq; and *J. E.* Grocer, the Manor or Lordship of *D.* in *Com. S.* with the Appurtenances: And the said *T. G.* being seised of the Manors of *R.* and *S.* and *K.* &c. in *Com. D.* he by Indenture, bearing date, &c. made between, &c. they the said *J. G.* and *J. E.* by the Consent and Appointment of the said *T. G.* as well for and in Performance of a certain Decree made in this Honourable Court, the . . . Day of, &c. in a Cause there then depending between the said *R. A.* and *G. A.* and *E. A.* Children of the said *R.* Complainants, and the said *T. G.* Defendant, and for other Considerations therein mentioned, did grant, bargain, sell, &c. unto the said *R. A.* and *T. H.* their Heirs and Assigns for ever, the said Manor or Lordship of *D.* with the Appurtenances, and all and singular Messuages, Mills, &c. And also all the Manors or reputed Manors of *R. S.* and *K.* with the Appurtenances, and all and singular, &c. To have and to hold the said Manors, Messua-

A Fine pleaded.

A former Decree recited.

Messuages, &c. unto the said *R. A.* and *T. H.* their Heirs and Assigns, to the only Use and Behoof of them, their Heirs and Assigns, in Trust for the respective Benefit of the said *G. A.* and *E. A.* Son and Daughter of the said *R. A.* and for securing unto them such Legacies as were bequeathed unto them by their said Grandfather *G. H.* decess'd, under a *Proviso*, That if the said *T. G.* his Heirs, Executors, &c. paid unto the said *G. A.* and *E. A.* certain Sums Yearly till 21, or Marriage, then the Sum of 1000*l.* to the said *E.* being for the Legacies given them by the last Will of the said *G. H.* that then the said Deed to be void, (*prout* the Deed:) And the Defendant *G. H.* for further Plea said, That in or about *Easter* Term, &c. he did exhibit his Bill into this Honourable Court against the said *T. G.* and *M.* his Wife, *O. N. W. B.* and *F.* his Wife, *J. M. R. A. G. A. J. W. G. H. J. P. S. T.* &c. thereby setting forth the Will of the said *G. H.* And that the said *T. G.* knowing he was to secure this Defendant's said Legacy of 5500*l.* did purchase the said Manor of *B.* &c. of the *E.* of *S.* and took the Conveyances in Trust for this Defendant, and often so declared; and therefore they ought to be convey'd to this Defendant towards Satisfaction of his said Legacy and Interest, he having not receiv'd any Part thereof, and pray'd a Discovery of what Estate or Title the Defendant claim'd to the said Manor of *B.* &c. and from whom, and what Debts, Legacies, or other Demands they claim'd from the said *T. G.* and that this Defendant might be paid his Legacy and Interest: To which Bill the said then Defendants put in several Answers, and this Defendant reply'd; and Issue being join'd, divers Witnesses were examin'd, and Publication duly pass'd: And the Cause coming to a Hearing in this Court (*such a Day and Year*) in the Presence of Counsel learned on all Sides, the Court after a long Debate of the Matter, and hearing all that the Counsel learned could alledge, and reading the Proofs taken in the Cause, the Points cheiffy insisted on between this Defendant and the said *B.* and *M. G.* as to the said Manor of *B.* being which should have the Redemption thereof, and whether the said Judgment entred into to *B.* could attach the said Manor;

Use in one,
Trust in another.

Bill exhibited.

A Trust set forth.

Answer, &c.

Publication.
Hearing.

The Points.

Proof.

nor; and it being full in Proof, that the said Manor was purchased with the Money rais'd out of the said *G. H.* his Estate, and so declared by the said *T. G.* at several times, and that he the said *T. G.* purchased the same with this Defendant's Legacy, and with an Intent for the Security thereof, and for his Use and Benefit, His Lordship therefore held it reasonable, and did accordingly order and decree, That this Defendant, whose Interest was much the greater, ought to be admitted to the Redemption thereof, (*&c. as the Decree is:*)

Decree.

Rehearing.

And afterwards the said Cause was several times reheard, and the said Order and Decree confirmed, &c. And the said *F. C.* the other Defendant, saith, That he hath purchased of the said other Defendant *H. G.* the said Manor of *B.* and all the Lands and Tenements thereunto belonging, for the Consideration of 6500 *l.* which this Defendant hath long since really and *bona fide* paid for the same, and hath Conveyances of the said Terms of 300 Years and 2000 Years, and also the Inheritance of the said Manor and Premises duly executed to him, and to his Trustees; whereby, as he is advised, he is legally intitled to the same, and ought quietly to hold and enjoy the same. All which Matters and Things these Defendants do plead in Bar to that Part of the Complainants Bill, and humbly demand the Judgment of this Honourable Court, whether they shall be compelled to make any further or other Answer to that Part of the Complainants Bill of Complaint. And these Defendants for Answer unto so much of the said Bill as is not herein before pleaded unto, say, That they do severally deny that they, or either of them, is or are Executor or Administrator to the said *T. G.* or ever administrated as such, not knowing of any Person that was Executor or Administrator to him; nor did they, or any other in trust for them, or either of them, or for their or either of their Uses, to their Knowledge, possess any Part of his Personal Estate, saving that this Defendant *H. G.* hath some odd Things, which to the best of his Judgment were of the Value of about 3 or 4 *l.* which were left in the House of Mr. *B.* after he had taken the said *T. G.*'s Goods in Execution, as is hereafter set forth: And this Defendant *H. G.* saith,

Answer to
the Residue.

That

That the said *T. G.*'s Personal Estate was before his Death taken in Execution by the said *W. B.* upon a Judgment or Judgments obtained against the said *T. G.* for 2000 *l.* or thereabouts, as is well known to the said *J. B.* and the said *W. B.* had the same Goods for Satisfaction thereof: And all these Defendants do severally deny all, and all Manner of Combination wherewith by the said Bill they stand charged, or that this Defendant *F. C.* hath in his Hands any Part of the Purchase-Money for the said Manor of *B.* or did detain any Part thereof, to answer any Incumbrances that the said Lands might be liable unto. And this Defendant *H. G.* saith, That the said *J. B.* was acquainted, and well knew of the said Suit and Proceedings, yet never did, during the said Suit, or during the said *T. G.*'s Life-time, extend the same, as this Defendant ever knew or heard of: And these Defendants know nothing of any other Manors or Lands, &c. than as aforesaid, That the said *T. G.* or any other in Trust for him, were seised or possessed of at the Time the said Judgment is pretended to be entred into, or any other since: And these Defendants know nothing of the Assignment of the Judgments in the Bill mentioned, nor what Title the Complainants, or any of them, have to the same, or to any the Sum or Sums of Money due thereupon. Without that, that, &c.

CHAP. IX.

Of Interrogatories, and Commissions to examine Witnesses; and of the Carriage and Execution of such Commissions, and several Orders of Court touching the same.

HAVING in the precedent Chapters shewn the Method of Proceedings in this Court from the Bill filed, and Process thereupon, to the Answer, Plea or Demurrer of the Defendant, and how Causes are heard thereupon: I come now to shew what is next to be observed in order to hear the Cause upon the Depositions of Witnesses.

Hearings on
Depositions
of Witnesses.

R

For

Interrogatories.

For as on Hearings by Bill and Answer, no Evidence is to be admitted (except Matters of Record) but what arises from the Bill and Answer it self: So when the Parties proceed to the Examination of Witnesses, the Cause is to be heard and determined by such Evidence as arises from the *Depositions* of such Witnesses as shall be examined upon *Interrogatories*, or Questions proposed to them.

Two kinds;
1. For Contempts.

Interrogatories in general, are of two Kinds, *viz.*

First, Interrogatories touching Contempts, whereupon the Contemnor of any Writ, Process, Order, or Decree, or of the Authority of this Court, is to be examined touching such Contempt; concerning which, see hereafter in the Chapter of Contempts, &c.

2. For Depositions, defined.

Secondly, Interrogatories in order to take the Depositions of Witnesses; which are, *Questions exhibited in Writing by the Party, Plaintiff or Defendant, or directed by the Court, to be proposed to or asked of the Witnesses to be examined in a Cause touching the Merits thereof, or some Incident therein.*

Direct, or counter.

And these Interrogatories are either *Direct*, *i. e.* proposed on the Behalf of the Party that produces the Witnesses; or *Counter*, *i. e.* proposed on the Behalf of the adverse Party: And ordinarily both Plaintiff and Defendant may exhibit both direct and counter Interrogatories. For when the Parties are at Issue, it is necessary as well to consider what the other Side may examine unto, as what we our selves have to prove; that so *Counter*, or *Cross Interrogatories*, may be exhibited if there be Occasion.

How drawn?
Short and pertinent.

Interrogatories must be drawn or perused, and signed by Counsel, else they are to stand suppress'd, *Ord. Chan. 217.* And they must be short and pertinent, and necessary to the Point.

Not leading.

They must not be leading; if they be, the Depositions taken thereupon are to stand suppress'd, *Ord. Chan. 216.* And note, These are accounted leading *Did you not do, or see, such or such a Thing? &c.* and so are all such as are too particular, or seem to point to one Side of the Question more than the other.

Engross'd.
When exhibited.

They must be engrossed in Parchment, and must be exhibited before any Witnesses examined on either Side; for the Witnesses are to be examined thereby.

If

If the Witnesses be to be examined before an Examiner of the Court, the Interrogatories must be produced before, and left with him: If in the Country on a Commission, the Interrogatories must be either annexed to the Commission at the issuing thereof, or by Consent of Parties, (which is now the general Practice) they may be exhibited before the Commissioners on opening the Commission.

Left with the Examiner, or Commissioners;

Though 'tis said, That heretofore the Interrogatories were always included in the Commission; and there seems good Reason for it, whether the Commission be *ex parte*, or not: For how else can there be any Certainty that the Interrogatories are not altered, &c.

Or, included in the Commission.

When Witnesses are examined in Court upon a Schedule of Interrogatories, there shall be no new Interrogatories put in to examine the same Witnesses: But new Interrogatories may be exhibited in Court for examining new Witnesses at any Time before Publication, notwithstanding there has been a joint Commission executed in the Country.

New or additional Interrogatories.

Also on a *Supplemental Bill*, the Court will upon Motion give Leave to add to the first Interrogatories, so as the new Interrogatories contain nothing but what relates to the Supplement. *Ord. Chan. 126.*

On Supplemental Bill.

If either Party have a Commission *de novo*, after he hath examined on a former, he must examine on the same Interrogatories as were exhibited by him on the former Commission, and no other Interrogatories can be admitted without an Order, or Consent of Parties.

Commission *de novo*.

Note, If Leave is given to examine a Witness after Publication, and before Hearing, a Master is commonly ordered to settle the Interrogatories, and that they may be to such Points only as were omitted before, and as are now ordered to be examined unto.

When to be settled by a Master.

And all Interrogatories for proving particular Points needful upon a Reference to a Master, shall be directed by the Master, and shall be to such Points only.

By an Order of 27 Feb. 1667. The Parties are at their Peril to make their full Proof before Publication: But if after Hearing there be a Reference to a Master for the stating an *Account*, or such like Matter, and he shall find any particular Points and Circumstances

Interrogatories after Publication, to be settled by a Master,

needful to ground his Report upon, which are not fully proved, nor could properly be examined to before the Hearing of the Cause, he shall direct the Parties to draw Interrogatories to such Points or Circumstances only, and examine thereupon in Court by the Examiners, if the Witnesses be or reside within ten Miles of *London*; but if further off, and the Parties desire it, he may direct a Commission into the Country, which is to be made out by the Six Clerks; and Publication shall pass according to the Course of the Court in such Cases. *Vide Ord. Chan. 156.*

Interrogatories upon Accounts.

It seems the more common Way now is, not to examine to a Matter of *Account* before Hearing, but after before a Master, if the Witnesses be in Town, &c. If not, then by Commission to be directed by the Master upon an Order for his being *arm'd* (as they call it) with a Commission; tho', it seems by the foregoing Order, he is always *arm'd* for that, or the like Purpose.

Defendant examined on Interrogatories.

If a Cause be depending by Bill in this Court, and the Plaintiff would have the Defendant sworn and examin'd upon Interrogatories, as a Witness in such Cause: If the Defendant will do so, the Court will compel the Plaintiff to stand to the Defendant's Depositions as conclusive, or else the Defendant is not to be examined; except some new Act be done by the Defendant in *puisne Temps*, and after the Issue join'd, as a Feoffment made, and an Estate executed, or a Release by Covin long after the Matter was pleaded on both Sides; for in such Cases the Plaintiff may compel the Defendant to be examined.

Forms of Interrogatories to examine Witnesses.

'Twould be endless to give you all the Forms of Interrogatories that might be produced, and therefore I shall only select such as seem most necessary to be proposed to *Witnesses* upon their *Examination*, as aforesaid.

INTERRO-

INTERROGATORIES to be administered to Witnesses to be produced, sworn and examined on the Part and Behalf of T. P. the Younger, and E. his Wife, Complainants, against E. G. and A. his Wife, and W. T. an Infant by the said A. his Mother and Guardian.

1. *Primis*, Do you know the Parties, Complainants and Defendants, or either, and which of them? and how long have you known them, or either, and which of them? *Declare the Truth, and your Knowledge therein.* The Form of Interrogatories to prove a Will in Chancery.

2. *Item*, Did you know H. T. of *deceas'd*, in his Life-time? How long did you know the said H. T. before his Death? About what Time did the said H. T. die? *Declare your Knowledge, and the Truth therein.*

3. *Item*, Were you present, and did you see the said H. T. make, sign, seal, deliver, publish and declare his last Will and Testament in Writing? And were you also present, and did you see the said Testator sign, seal, deliver and publish the Writing or Codicil thereto annexed, or either, and which of them? Is your Name subscribed as a Witness to the said Will, or to the Codicil, of your own proper Hand-writing? Was it so written by you in the Presence of the Testator? Did the said Testator sign, seal, deliver and publish his said last Will and Codicil on or about the Days of the Date thereof, or at any, and what other Time, as you know, remember or believe? What other Person or Persons was or were present when the said Testator did so sign, seal, deliver and publish his said last Will? And also when the Testator signed, sealed, and delivered the Codicil thereunto annexed? Did such Person or Persons, or any or either, and which of them, write their Names as Witnesses to the said Will, and to the Codicil, or to either, and which of them, as you know or believe? *Declare the Truth of your Knowledge, or Belief therein, with the Reasons of such your Belief.*

Of Interrogatories

4. *Item*. Do you know or believe that the said last Will and Testament was and is in the Words, or to the Effect following? In the Name of God, &c. *Declare, &c.*

5. *Item*, Is the Will now produced and shewed to you, the very last Will and Testament of *H. T.* and which the said *H. T.* signed, sealed and delivered in your Presence? And is the Codicil now shewed to you, the very Codicil of and which the said *H. T.* signed, sealed and delivered in your Presence? Was the said *H. T.* of a perfect, sound, and disposing Mind and Memory when he did so sign, seal, deliver, publish and declare his last Will and Testament, now produced to you? And was the said Testator of a perfect, sound, and disposing Mind and Memory when he did so sign, seal and deliver the Codicil annexed to the said Will shewed to you, as you know, have heard, or do believe? *Declare the Truth as to the best of your Knowledge, or Belief herein, with the Reasons thereof.*

Interrogato-
ries to prove
Deeds and
Payments of
Money.

1. *Imprimis*, Do you know the Parties, Plaintiffs, and Defendants? Did you know *S. S.* late Father of the said *R. S.* and how long, &c. *Declare, &c.*

2. *Item*, Was the Deed or Writing, (Deeds or Writings) now shewed unto you, sealed and delivered in your Presence, and by whom? Were you a Witness to such Sealing and Delivery thereof? Is your Name subscribed (or indorsed) as a Witness thereto, of your own Hand-writing? And have you been acquainted with the Hand-writing of the said Party (or Parties) and Witness (or Witnesses) to the said Deed (or Deeds) and Writing (or Writings) or any, and which of them? Do you know their Names subscribed (or indorsed) to be of their own Hand-writing? *Declare the whole of your Knowledge or Belief therein.*

Money paid-

3. *Item*, Do you know any Sum or Sums of Money paid by *N. D.* decess'd, or any of the Servants or Agents of the said *T. S.* the Plaintiff's Father, or by any other for the said *T. S.* by his, their, or any of their Appointment to the said *S. S.* the Defendant's Father, or to any other Person or Persons to his Use? What Sums did he, they, or any of them pay? When was the

the same paid? And to whom? Declare the Truth of your Knowledge, &c.

4. *Item*, Have you been acquainted with the Hand-writing of the said S. S. the Defendant's Father? Do you believe the Receipt or Acquittance, Receipts or Acquittances, now shewed unto you, to be the proper Hand-writing of the said S. S. or whose Writing do you believe the same to be? Were you a Witness to them, or any, and which of them? And is your Name subscribed or indorsed as a Witness, of your own Hand-writing? Have you been acquainted with the Hand-writing of any of the Witnesses to the said Receipt or Acquittance, Receipts or Acquittances, or any, and which of them? Do you verily believe that the Names of the said S. S. or of the Witness or Witnesses to the Receipt or Receipts, Acquittance or Acquittances, or any, and which of them, to be their own proper Hand-writing? Declare the Truth of your Knowledge, or Belief therein, fully and at large, with the Reasons of your Belief.

1. *Imprimis*, Did A. B. late of, &c. deceased, at any Time in his Life-time, and where and when, give you Directions from him at any time, where and when, to draw the said A. B. his Will? Declare, &c.

2. *Item*, Did you draw or ingross the Writing purporting the last Will of the said A. B. now shewed unto you, in the very Words as the same is expressed, and of whose Hand-writing is the said Will, and the Words therein contained? Declare, &c.

3. *Item*, Did you see the said A. B. in the Day, &c. or at any other Time, and when sign and seal the said Will? And did he publish and declare the same to be his Will? And is the Writing now shewed unto you, contained in seven Sheets of Paper, to each Sheet whereof his Name is subscribed, and Seal affixed, the very same which he did then sign and seal as his Will? And who were present Witnesses thereunto? And was the said A. B. at the Time of the signing and publishing of the same, of a good Understanding, and of a disposing Memory? Declare, &c.

Of Interrogatories

4. *Item*, Whether after the said *A. B.* had signed and sealed the said Will as aforesaid, was the same in the Presence of all the Witnesses thereunto, sealed up by the said *A. B.* or by any other? And by whom was the same sealed up? By the Seal of the said *A. B.* or by the Seal of any other? And by whose Seal, and whom did the said *A. B.* desire to keep the same? And was the said *A. B.* then of perfect Understanding? Did the same Will continue so sealed up until the Day of, &c. and what other Time? And was the same then opened, and where, and in whose Presence? Is the Writing now shewed unto you, contained in seven Sheets of Paper, the very Will, which was so sealed up and opened, as aforesaid, without any Addition, Interlineation or Obliteration, after it was published by the said *A. B.* for his last Will?

5. *Item*, Whether did the said *A. B.* sign, seal and publish his last Will in Writing? Do you know the Contents of the said Will? If yea, express the Contents thereof, Word for Word, upon this your Examination.

To prove a Custom for letting of Copyhold Lands for three Lives, &c.

1. *Imprimis*, Do you know the Plaintiffs and Defendants in this Cause, or any, and which of them? And did you know *T. M.* late of *C. &c.* *T. M.* and *E. M.* his Sons, *W. B.* late Father of the said, &c. all deceased, and any, and which of them?

2. *Item*, Do you know the said Manor or Lordship of *C.* in the said County of, &c. and do you know that any, and what Lands and Tenements, Parcel of, &c. and lying within the said Manor or Lordship, have been demised or demiseable by Copy of Court Roll, according to the Custom of the said Manor or Lordship; that is to say, for three Lives to the Heir or Heirs of the Survivor, or longest Liver of such three Lives, as by Surrender or Copy of Court Roll thereof, the same should be limited or appointed? Declare, &c.

To prove Seisin.

3. *Item*, Do you know that the said *T. M.* and *A.* his then Wife, and *T. M.* the Younger, and *E. M.* and any, and which of them were in their Life-time, and when seised, according to the said Custom, of a certain Tenement, and Lands thereunto belonging, Parcel

cel. of the said Manor or Lordship, lying, &c. And did the said *T. M.* the Younger, survive and overlive the said *T. M.* the Elder, and *A.* his Wife, and the said *E. M.* And when did the said *A.* and *E. M.* depart this Life? And do you know that the said Tenement and Lands, whereof the said *T. M.* was so seised, are, or have been Part of the Customary or Copyhold Lands of the same Manor or Lordship? Declare the Reason of such your Knowledge.

4. *Item*, Do you know that about the Month of, &c. in the Year of our Lord, &c. or at any other Time after the Death of the said *T. M.* and when, the said *T. M.* the Younger, being so seised thereof, did out of Court surrender, according to the Custom of the said Manor, the said customary Lands and Tenements, into the Hands of the then Lord or Lords of the said Manor, by the Hands of *J. M.* and *T. M.* two of the customary Tenants of the said Manor or Lordship, to the Use of him the said *J. M.* the Younger, and *A.* his then Wife, and the Survivor of them, the Remainder thereof to the said *W. B.* Father of the Plaintiff *K.* and to the Heir or Heirs of the said *W. B.* Declare, &c. To prove a Surrender.

5. *Item*, Do you know that the said *J. M.* or *T. M.* or either of them, or any other Customary Tenants of the said Manor, and who by Name did at any Court or Courts holden for the said Manor or Lordship of C. and when, present any Surrender or Surrenders made by the said *T. M.* of the said Customary Tenement and Lands, whereby the same were limited after the Decease of the said *T. M.* and *A.* his Wife, to the said *W.* and his or their Heirs? Declare, &c. To prove a Presentment.

Do you know when the said *T. M.* the Younger, and *A.* his Wife, and *K.* did depart this Life? And is the Complainant *K.* the sole Daughter and Heir of the said *W. B.* and what Age was she of at the Decease of the said *W. B.* her Father? To prove an Heir.

What is the true yearly Value of the said Customary Tenement and Lands, which were so held by the said *T. M.* and for how long Time hath the Defendant *K.* or any for him, held and enjoyed the same? And what yearly Rent was reserved to the Lord of the said Manor, to be paid by the said *T. M.* for the same Lands? To prove the yearly Value and Possession.

To prove a
Title to di-
vers Manors,
Lordships,
&c.

1. *Imprimis*, Do you know the Plaintiffs and Defendants in this Cause, any, and which of them? And did you know *J. B.* late of, &c. Esq; deceased, and Dame *E. H.* late Wife of the Defendant Sir *J. H.* Sister of the said *J. B.* also deceased, or either, and which of them, in their or either of their Life-time? *Declare*, &c.

2. *Item*, Do you know the Manors or Lordships of *W. W.* and *B.* in the said County of *S.* the Manors and Lordships of great and little *A.* in the Counties of *G.* and *W.* or one of them, the Town or Village of *L.* in the County of *L.* or any, and which of the same? And was Sir *J. B.* Knight, deceased, Father of the said *J. B.* at any Time, and when, in his Life-time Owner or reputed Owner of the same, or any, and which of the same? And do you know what Person or Persons were Owner or Owners of the same Manors and Premises, or any, and which of the same? And when before such Time as the said Sir *J. B.* was Owner thereof, did the said Sir *J. B.* or the said *J. B.* and which, or either of them, purchase the same, or any, and which of the same? Did the said Sir *J. B.* marry with any, and what Woman, who was Inheretrix of the same Manors and Premises, or any, and what Part or Parts of the same? *Declare* your Knowledge thereof, and the Reason of such your Knowledge.

3. *Item*, Was the Deed or Writing, Deeds or Writings, now shewed unto you, sealed and delivered, and by whom? Were you a Witness to the Sealing and Delivery thereof, and is your Name subscribed and indorsed as a Witness thereunto, and of your own Hand-writing? And have you been acquainted with the Hand-writing of the Party or Parties, or Witnesses to the said Deed or Writing, Deeds or Writings, or any, and which of them? And do you verily believe the Names of the said Party or Parties, or Witnesses to the same Deed or Deeds, Writing or Writings, or any, and of which of them to be their own proper Hand-writing?

4. *Item*, Do you know that *E. B.* Sister of the said *J. B.* deceased, was the Wife of the Defendant Sir *J. H.* and do you know the Time of the Intermarriage between them the said *E.* and the Defendant Sir *J. H.* and was the said *E.* only Sister of the said *J. B.* Esq;

5. *Item*,

5. *Item*, Do you know, or have credibly heard, that the said *J. B.* did, or was at any time in his Life-time, and when, become engaged with Sir *J. B.* Knight, the Complainant's Father, as his Surety, for any and what Sum or Sums of Money, or other, and what Things, and to whom? And have not you heard the said *J. B.* declare that he had suffered much by Reason of the said Ingagement from the Complainant, and did not the said *J. B.* seem to be thereupon much displeased, that he protested and declared that he would have nothing more to do with the Complainant, or Words to that effect? Declare what you have heard the said *J. B.* say or speak therein.

6. *Item*, Did the said *J. B.* Esq; at any Time or Times, and when, in his Life-time, use any, and what Words of dislike touching the Complainant, or of the Complainant's not being to have the said *J. B.*'s Estate after his Decease? And did the said *J. B.* at any Time or Times, in his Life, and when, use any, and what Words or Speeches touching the Complainant, or Sir *J. B.* the Complainant's Father, and either, and which of them, whereby it did appear he was displeased with them, and either, and which of them, and in whose Presence did he use Words or Speeches to that effect? Declare, &c.

7. *Item*, Did the said *J. B.* at any Time or Times, and when during the Time of Sicknes whereof he died, or at any other Time or Times, or when, in his Life-time, declare or use any, and what Words and Speeches, whereby it did appeat that his Mind was that his said Estate should or might descend to the Defendant Sir *J. H.* his Nephew, or to that Effect? Have you heard the said *J. B.* use any, and what Expressions of Love and Affection towards the Defendant Sir *J. H.* What Words of Love and Affection did he use towards him, where did he use such Words, Speeches or Affections, when, and in whose Presence, and upon what Occasion did he use them? Declare the Truth.

8. *Item*, Did the Complainant, or any other Person or Persons for him, as you believe, and who by Name, at any Time or Times, and when, where and in whose Presence, promise or propose unto you, or to any other Person or Persons any, and what Reward, Offer and Gratuity, to the Intent that you, or such other Person
or

or Persons, should for such Reward or Gratuity set on foot some pretended Deed or Deeds, thereby to intitle the Complainant, or otherwise, to prejudice the Defendant Sir *J. H.* his Title to the Estate of the said *J. B.* deceased, or by which the same might seem to be intailed, or otherwise settled upon the Complainant to his Use?

9. *Item*, Do you know *M. B.* of, &c. and did the same *M. B.* at any Time or Times, and when in the Life-time of the said *J. B.* Esq; by Letter or otherwise, request you, or any other Person or Persons, and who by Name, to use Means to perswade or prevail upon the said *J. B.* to settle his Estate? Did the said *M. B.* then, or at any other Time or Times, say and declare unto you that the said *J. B.* had made any Will or Settlement of his Estate, and when, where, and in whose Presence did he so say or declare, and upon what Occasion?

10. *Item*, Did you know one *G. H.* who was Servant to the said *J. B.* in his Life-time, and when, and for how long Time did he serve the said *J. B.* and did you at any Time and Times, and when, since the Decease of the said *J. B.* hear the said *G. W.* say or declare that the said *J. B.* had not made any last Will or Testament, or other Settlement touching his Estate, or Words to such Effect, when, and in whose Presence did he so say and declare, and where, and upon what Occasion?

11. *Item*, Did the said *G. W.* at any Time or Times, and when, say or declare to you, or any, and what other Person or Persons, that he did know of any Deed or Settlement made by the said *J. B.* since the Time of the said *J. B.*'s Travel into foreign Parts, and where, and upon what Occasion did the said *G. W.* so say or declare, and when? Did the said *J. B.* travel beyond the Seas as you know or have heard? Declare the Truth.

12. *Item*, Did the Complainant at any Time or Times, and when, by his Letter or Word of Mouth, send unto you or any other, and what other Person to your Knowledge, or enquire of you, or such other, to be informed whether the said *J. B.* deceased, had given or settled any Estate to or upon him the said Complainant, what were the Contents or Effects of such Letter, Messuage or Inquiry, and as you know or have heard? Declare the Truth of your Knowledge herein.

1. *Impri-*

1. *Imprimis*, Have you been acquainted with the Hand-writing of Sir T. F. Knight, deceased, the Defendant's late Father? Do you believe the Writing or Rental, now shewed you, to be the proper Hand-writing of the said Sir T. F. or whose Hand-writing do you believe the same to be? Declare, &c.

2. *Item*, Are the Writings now shewed unto you, or either, and which of them, true Rentals of the Estate, whereto T. Lord Viscount S. the Plaintiff's Father, deceased, was seised at the Time of his Decease, or any or what Part or Parts thereof? Were you at any Time or Times, and when since the Decease of the said Lord Viscount S. and when, and for how long Time, and by whom were you so imployed by the said T. F. the Defendant's Father in his Life-time, in or about the gathering or receiving the Rents of the Plaintiff's Estate, or any Part, or what Part thereof, or do you know of any other, and what other Person or Persons, who was or were so imployed by the said Sir T. F. Declare, &c.

3. *Item*, Do you know or have heard, that the said Sir T. F. Knight, the Defendant's Father, deceased, did receive for the Plaintiff, in his Right, the Rents of any, and what Lands, Tenements and Hereditaments lying in the Parishes of E. and P. in the County of K. and when, and for how long Time did the said Sir T. F. receive the same? And were you at any Time, when, and for how long Time imployed by the said Sir T. F. in Receiving those Rents? And do you know of any other Person or Persons that was, or were at any Time, and when, imployed by the said Sir T. F. in and about Receiving of the Rents of any Lands or Tenements whatsoever, lying within the said Parishes, or either of them? Declare, &c.

4. *Item*, Do you know the Yearly Value of the Quit-Rents of the Plaintiff's Manors of O. B. O. P. S. S. H. and W. in the County of K. or any, or which of them? Have you seen a Rental or Rentals thereof? Declare the Reasons of such your Knowledge. Declare, &c.

5. *Item*, Do you hold of the Plaintiff, as his Tenant, any, and what Lands or Tenements lying within the Parishes of E. and P. aforesaid, or either of them, in the County of K. And for how long Time have you so held the same, and what are the Yearly Rent or Rents thereof? Declare the Truth, &c.

Of Interrogatories, &c.

6. *Item*, Did Sir T. F. Knight, or any for him, or any by his Direction or Appointment, at any Time or Times in his Life-time, and for how long Time, receive of you or any other, and what other, or out of the Plaintiff's Tenements, or any of his Lands lying in the said Parishes, any Rent or Rents thereof, and what or how much Rent or Rents did you, or such other Person or Persons so pay? *Declare what you can say to this Interrogatory according to the best of your Knowledge or Belief, with the Reasons of such your Knowledge and Belief.*

Reference to Arbitrators.

7. *Item*, Do you know, have credibly heard, or believe any Reference has been proposed by any or either, and which of the Defendants, to the Complainant to refer the Matters in question in this Suit to two indifferent Persons to be chosen between them as Arbitrators? When and where was such Proposal made? Was it before or since the Commencement of this Suit, was there any Arbitrators, and who named, and was you one of the Persons named to be an Arbitrator on the Complainant's Side, and who was the Arbitrator on the Defendant's Side? Were there any Bonds of Arbitration drawn, and by whom entered into, and of what Penalty, and what Time was limited therein for the Arbitrators to make their Award? Did the said Arbitrators make any Award, or not? If not, what was the Obstruction or Impediment that hindered them from so doing? *Declare the Truth upon this Interrogatory fully and at large.*

A general concluding Interrogatory.

8. *Item*, Do you know of any other Matter or Thing, or have you heard, or can you say any thing touching the Matters in Question, that may tend to the Benefit and Advantage of the Complainants in this Cause, besides what you have been before interrogated unto? *Declare the same fully and at large, as if you had been thereunto particularly interrogated.*

See Forms of Interrogatories upon Contempts, in the Chapter of Contempts.

Of Commissions to examine Witnesses, and the Execution thereof.

A Commission to examine Witnesses is sometimes to examine them to the Cause, *i. e.* as to the Merits thereof, or to some particular Point in Question; or it may be to examine them touching a Contempt or the Breach of some Order of Court, &c. which see in *Contempts*, &c. Examination to the Cause is generally before Hearing, though sometimes it may be after Hearing, as upon an Account referred to a Master, or upon new Matter started at the Hearing.

Commissions to examine Witnesses,

Granted before hearing.

A Commission is also often had to examine Witnesses in *perpetuam rei Memoriam*, touching which see the next Chapter.

Though a Cause be only Matter of Account which may be, and generally is examined to after Hearing, yet where a Defendant desired a Commission before Hearing the Court granted it, as being what he had a Right unto.

And though this Commission to examine Witnesses is not ordinarily to be granted till the Cause be at Issue, yet if a Witness be very aged or sick, the Court will sometimes order it *de bene esse* even before Answer.

Before Answer.

Before this Commission issue the Plaintiff is ordinarily to reply, and to serve the Defendant with a *Subpoena* to rejoin, and upon the Return thereof give an eight Days Rule to rejoin; which the Defendant having done, or the eight Days being expired, the Complainant may give two ordinary Return-days for the Defendant to produce his Witnesses, and then a peremptory Day; before which, if the Defendant comes in he may join in Commission with the Plaintiff; or if the Plaintiff does not think fit to join in Commission, the Defendant may of Course upon Petition or Motion have one *ex parte*.

Joinder in Commission after Replication and Rules to rejoin.

If the Defendant rejoin *gratis*, or the Parties go to Commission by Consent, there needs no *Subpoena* to rejoin. 1 *Chan. Cases* 15.

If the Plaintiff be minded to go to Hearing on Bill and Answer, then he neither replies, nor takes out any Commission.

The Plaintiff
to take it out
or.

Except the
Defendant
has some
Cause to have
it.

The Method
of taking it
out, and
striking
Commission-
ers Names.

Exceptions
to the Com-
missioners.

The Plaintiff ordinarily is to have the first taking out, and Carriage of the Commission to examine Witnesses; but if the Defendant has Witnesses which live beyond the Seas where the Plaintiff has none, it should seem otherwise; for in such Case he shall have a Commission granted him for examining his Witnesses only.

And so he shall if his Witnesses here live a long way off the Plaintiffs, as 60 or 80 Miles.

So if when a Cause is at issue the Plaintiff will not go on to Commission, the Defendant may have a Commission to examine his own Witnesses, and shall have the Carriage thereof.

So perhaps if the Plaintiff commit any gross Abuse in the Execution of the first Commission, the Defendant shall have the Carriage of the second.

When either Party is entitled to have a Commission to examine Witnesses, his Clerk or Deputy calls upon the other Party's Clerk for Four Commissioners Names, which being given him in Time, he leaves with the other Clerk Four Names also; and after each Clerk has consulted his Client or the Solicitor, he strikes out Two of the Four Names which had been so delivered in this Manner.

First, He that has the Carriage of the Commission strikes out one of those that were named by the other Side; and then the other strikes out one of those that were named by him, and so each of them strikes out one more, and the Four remaining are the Commissioners.

But after the Names have been so struck out as aforesaid, Exceptions may be also taken to those remaining, and the common Exceptions to such Commissioners are these, *viz.*

That he is of Kindred, or allied to the Party for whom he is named, or that he is Master to such Party, or a Landlord, or Tenant, or Partner; that he hath a Suit in Law with the Party adverse to him for whom he is named; or is of Council, or is Attorney or Solicitor or Follower of the Cause on one Side; or that the Party for whom named is indebted to him, or any other apparent Cause or Partiality or Siding with either Party.

If the adverse Party does not give, or strike Names Commission in Time, he who is to have the Carriage of the Commission may, by Order upon Motion, name all the Four Commissioners, and have a Commission *ex parte*. And where a Commission is granted *ex parte*, there needs no Notice to the other Side of the Execution thereof.

And 'tis said, after a *Subpoena* to rejoin is served, and Commissioners Names called for in Term, of the Defendant's Clerk, who refuses or delays joining in the Commission, till the second Seal after Term, the Complainant's Clerk may take out a Commission *ex parte*.

By the ancient Orders and Course of the Court Commissions to examine were not to be granted, but when to be for Age, Impotence, or remote distance of Place. *Vide granted, &c. Ord. Chan. 11.*

But now the Order is only, That no Commission to examine Witnesses shall be executed in or near London, nor within 10 Miles thereof, without a special Order to be obtained upon *Affidavit* of the Party's Inability to Travel, or other good Matter shewn. And that all Depositions taken contrary hereto shall be superseded and suppress'd *ipso facto*, and not allowed to be read as Evidence at the Hearing, and the Parties who caused the same to be executed, are to suffer such Punishment for their Contempt and Irregularity as the Court shall think fit. *Ord. Chan.*

133.

It is irregular for the Clerk of the Solicitor in the Cause, to write as Clerk in the Execution of the Commission; and the Court has in such Cases suppress'd the Depositions. *2 Chan. Reports 393.* How executed.

He who has the Carriage of the Commission or his Commissioners must either in Person, or by Note in Writing left at the Place of the usual Abode of the Party, or his Solicitor give 14 Days Notice of the Time and Place of executing the Commission. *Note,* This is usually done by Note under the Hands of Two of the Commissioners directed to some Person mentioned in the Labels to that Purpose. 14 Days Notice.

And if Notice as aforesaid be not given of executing the Commission, the Court will suppress the
S Exam-

Of Commissions

Examinations, and grant the other a new Commission.

Adjourn-
ment. *Vide*
infra.

'Tis said, If Notice be given of executing the Commission, and at the Day appointed the Commission is opened, but nothing done thereupon, nor any *Adjournment* made, the Commission is lost, except the other Side agree to adjourn, or to take new Notice: But if the Commission be not opened, and he who has the Carriage thereof gives new Notice, and then executes it, this is a sufficient Execution, unless in the mean while the other Side had obtained, and served an Order to stay Proceedings till the Costs of the former Day be paid, and that they are not paid.

'Tis usual when an Adjournment is made, to make a *Memorandum* of Entry thereof, which the Commissioners are to sign.

Default in
the Execu-
tion.

If by Default of him that has the Carriage of the Commission or his Commissioners nothing is done thereon, he shall bear the Charges the other Side is put to about it, either for Fees of Court, bringing or retaining Commissioners or Witnesses, or otherwise, to be ascertained by the Oath of the Party, or him that disbursed the Money for him, and shall renew the Commission at his own Charge. *Ord. Chanc. 132.*

Commission
lost.
Vide supra.

Where only one Commissioner on each Side met, the Plaintiff's Commissioner went away without doing any Thing, and so the Commission was lost, the Court ordered the Plaintiff to pay the Defendant his Costs, and that there should be a new Commission, and the Defendant to have the Carriage of it. And, *Note*, where a Commission *lost* by the Fault of him who had the Carriage of it is renewed, the other Side commonly hath the Carriage of it.

Or become
void.

And 'tis said, If the Commission become *void* by the Error of the Clerk in making it, the Costs shall be born by him and that Side for whom it was taken out, and who had the Carriage of it.

Commission
renewed.

Due Notice being given, if the one Side produces and examines all his Witnesses, and the other Side does not, but prays a new Commission; if it be granted, he that prays it shall bear all the charges of such *renewed* Commission both in the Court and in the Country, and as well for the Charge and Entertainment

ment of the others Commissioners as his own; and the other Side shall be permitted to cross examine the Witnesses produced by him that renews the Commission. But if the other Side will examine any Witnesses of his own, then he shall bear his own Part of the Charge. The Charges above-mentioned to be ascertained by the Oath of the Party, or of him who disbursed the Money for him. *Ord. Chan. 132.*

If the Commissioners on both Sides attend the Execution of the Commission, and one Side examines, but the other neither examines, nor puts in Interrogatories, he shall never do it afterwards without Order of Court on good Cause shewn. *1 Chan. Cases 274.*

Non-attendance on one Side.

So where the Defendant joins in Dommission, &c. though his Commissioners do not attend.

But if *Affidavit* be made of some reasonable Cause of Non-attendance, and that *neither the Party* (who did not examine) *nor any for him or by his Direction or Knowledge has seen, heard or been informed of the Depositions taken, or any of them, nor willingly will see, &c.* till he has examined or till Publication, the Court will grant him a Commission to examine.

Affidavit of the Cause.

And so upon an Examination in Court before the Examiner; and the Court in such Cases will order Publication to stay some Time.

Publication stayed.

He at whose Instance a Commission is renewed after a former Commission executed and returned, and he by the Default of whom, or of whose Commissioners a former Commission was not executed, and it is thereupon renewed, shall at his Peril examine all his Witnesses on that renewed Commission, or shall examine them in Court, by the End of the Term it is returnable without any more or further Delay. *Ord. Chan. 133.*

Commission renewed.

Where Publication is past, no Commission to examine can be granted or renewed without special Order.

Publication past.

Heretofore *Subpœna's* were frequently granted for Witnesses to appear and testify before the Commissioners.

Subpœna's ad testificand.

But the general Course now is, The Commissioners by Note or Summons under two or more of their Hands, call the Witnesses before them: The Form

Witnesses summoned.

whereof see *infra*. But I think no Attachment lies against the Witnesses for appearing thereupon, seeing no Writ is directed to them, nor the Great Seal seen.

And refusing to appear, examined in Court.

Where a Witness refused to be examined before the Commissioners, the Court upon Motion granted a *Subpena* for him to be examined in Court at his own Costs. And this, it seems, is the usual Method, if they refuse to appear, or to be examined.

But 'tis said, That Witnesses may refuse to appear, or to be examined till their reasonable Charges be paid them for their Loss of Time, Pains and Expenses.

New Commission.

Where the Witnesses are duly served, &c. and are able, but do not appear, a new Commission may be had upon Oath thereof.

Interrogatories exhibited.

Each Side ought to exhibit Interrogatories; and 'tis said, The Court dislikes the Practice of examining the Defendants Witnesses on the Plaintiffs Interrogatories, or *à contra*.

Commissioners to examine, and how.

The Commissioners must themselves examine the Witnesses, and not leave so weighty an Affair to their Clerks or others. Also they are to examine but to one Interrogatory at a Time, and are not to read another Interrogatory to them, till they have gone through and answered the former; and they are to hold the Witness to answer to every Point interrogated.

Examination amended.

The Commissioners are likewise to take what comes from them in Answer to what they are interrogated unto, or examined upon, and are not to permit them upon their own Sight or Reading of the Interrogatories to set it down themselves. But after they have been examined, they may suffer them upon better Thoughts, to amend their Examination, (which Thing is not to be suffered on an Examination in Court.)

Idle Questions, &c. avoided.

The Commissioners ought not to ask idle Questions, *i. e.* besides or foreign to the Matter of the Interrogatories, nor set down impertinent Answers, but all material Answers truly as delivered.

Short Notes.

A Witness may be permitted to use such short Notes he brings with him to help his Memory, but not the

the Substance of his Depositions, nor may he transcribe such Notes *verbatim*.

One Commissioner may be examined as a Witness by the other Commissioners, so he be examined before any Witness hath been examined in his Presence, &c. But otherwise his Depositions will be suppress'd, because he heard or saw the other Depositions.

A special Commission was granted to examine the Quantity and Value of certain Oar, &c. The Six Clerks appointed the Time and Place. *Per Cur'* the Time and Place is only for the first Meeting of the Commissioners; but afterwards they may adjourn to another Time or another Place.

If a Commission be adjourned to another Day and Place, and Witnesses are examined, the Time and Place where such Examinations were taken, ought to be mentioned and set down in the Title of the respective Depositions; because in an Indictment of Perjury founded thereupon, the Place must be mentioned, and (I suppose) proved: But *prima facie*, it shall be intended *where the Stile mentions*.

The Examinations are to be engross'd in Parchment, and the Commissioners are to set their Hands to every Sheet and Schedule, and to a Certificate on the back of the Commission, that the Execution thereof is contained in a Schedule or Schedules thereunto annexed. This is usually done in *Latin* according to this Form, *viz. Executio istius Commissionis patet, &c. as hereunder*.

After the Commissioners have so certified and subscribed, the whole is to be closed up, and sealed with the Commissioners Seals, and to be delivered to a Master by one of them, or to be sent up to the Court by one who must make Oath that he received the same so sealed from one of the Commissioners, and that it has not been opened or altered since; as on the Delivery of an Answer, *which see before*.

And being so delivered, the Examinations are not to be opened or copied until Publication be duly past.

If the Commissioners cannot agree, or meet with any Obstructions in executing the Commission, that or what else is necessary to inform the Court of, must

A Commissioner examined as a Witness.

Time and Place.

Adjournment.

Examinations ingross'd, &c.

Certify'd, &c. subscribed, sealed, and returned on Oath.

Not to be opened until Publication.

Obstructions to be certified, &c.

be certified by the Commissioners in the Return of the Commission.

An Examiner sent.

And in such Cases, where the Execution of the Commission is prevented, the Court will sometimes send an Examiner down into the Country.

Irregularities certified, &c.

Where Commissioners on one Side certified Irregularity, and both or one of the other Side made *Affidavit e contra*, the Court ordered the Commissioners on the other Side to make *Affidavit* too; for the Court will in such Case order whatever shall be thought necessary for the Discovery of the Truth of the Fact.

Partiality and ill Practice.

The Court will sometimes order the Commissioners touching Partiality and ill Practice. Where the Commissioners on one Side certified Partiality in the other, the Court seemed unwilling to take Notice of it, saying, Let them certify the Matter committed to their Charge, and if there be Misdemeanor, let the Party wronged make *Affidavit* thereof, &c. *Cary 43*.

In the Commissioners.

A joint Commission issued to examine both Parts, directed to four, three, or two Commissioners, three of them met and examined Witnesses, and appointed a new Day to examine more. The Defendants Commissioners took up the Commission, carried it away, and came not at the Day appointed. The Plaintiff's Commissioners came and examined Witnesses without having the Commission, and certified those with the former Depositions, and the whole Matter.

The Court ordered the Depositions certified to be sealed up again, and to remain here, and awarded a *Subpœna Duces tecum* against the Commissioners to bring in the Commission, and thereupon the Court would take further Order.

Exhibits altered.

Exhibits of Writings were alledged to be altered and interlined since the Commission to examine Witnesses was executed; the Court granted a new Commission to examine this Matter. 1 *Chan. Cases*. 273.

Commission discharged.

And 'tis said, a Commission to examine cannot be discharged for *Irregularity* upon a Petition, without a Reference, &c. and Certificate of such *Irregularity*.

A Com:

A Commission to examine Witnesses upon Interrogatories is usually in this Form, viz.

Anna, &c. A. B. C. D. E. F. & G. H. *Salutem.* Form of a
Commission
to examine
Witnesses
upon Inter-
rogatories.
*Sciatis quod nos, de fidelitatibus & providis Circumspecti-
 onibus vestris plurimum confidentes, assignamus ac te-
 nore presentium damus vobis tribus vel duobus vestrum
 plenam Potestatem & Auctoritatem Testes quoscunque de
 & super quibusdam Interrogatoriis tam ex parte R. S.
 Quer' quam ex parte T. W. Def. seu earundem par-
 tium alterius, vobis tribus vel duobus vestrum admini-
 strand' sive deliberand' diligenter examinand' & ideo
 vobis tribus vel duobus vestrum mandamus, quod ad cer-
 tos Dies & Loca quos ad hoc previderitis prefat' Testes
 coram vobis tribus vel duobus vestrum venire faciatis &
 evocetis, ac ipsos Testes & eorum quemlibet per se sepa-
 ratim de & super Interrogat' predict' super Sacramenta
 sua tacti per ipsos prius coram vobis tribus vel duo-
 bus vestrum sacrosanctis Dei Evangeliiis corporaliter
 praestand' diligenter examinetis, Examinationesque suas
 super eisdem recipiatis, & in scriptis in pergamento re-
 digatis. Et cum ill' sic ceperitis eas nobis in Cancellaria
 nostram (tali Retorn') ubicunque tunc fuerit sub
 sigillis vestris trium vel duorum vestrum di' inct' & a-
 perite mittatis una cum Interrogat' predict', & hoc Breve.
 Teste, &c.*

And if it be to examine the Defendant himself touching a Contempt, then thus, viz. *Super quibusdam Interrogat' presentibus interclus' T. W. Def. tangen' quendam Contemptum predict' T. in materia Respons' sua perpetrat' ut dicitur diligenter examinand', &c.* To examine
the Defen-
dant on a
Contempt.

And if it be to produce Witnesses touching a Contempt, then after *Salutem*, add *Sciatis quod nos assignamus vos, ac tenore presentium damus vobis tribus vel duobus vestrum plenam Potestatem & Auctoritatem Testes quoscunque per R. S. & al' Quer' producend' tangen' quosdam contemptus T. W. Def. in materia dict' R. S. & al' Quer' perpetrat' ut dicitur de & super quibusdam Interrogat' presentibus intirclus' diligenter examinand'. Et ideo, &c.* To produce
Witnesses to
a Contempt.

A special Commission to Examine Witnesses, and also the Defendant.

A special Commission to examine Witnesses and the Defendant.

Sciatis quod nos de fidelitate, &c. Assignavimus vos, &c. Damus, &c. Potest. & Authorit. Testes quoscunq; de & super quibusdam Interrogator, &c. to Examinand. Nec non dedimus vobis, &c. ulterior. Potest. & Authorit. quosdam, D. D. H. H. & al. Defenden. mentionat. in quodam ordine hujus Curia geren. Dat. Nono Die Instantis mensis Junii super quibusdam Interrog. ex parte præsat. Quer. vobis, &c. exhibend. diligent. examinare. Et ideo, &c. to, provideritis Testes præd. nec non Defend. antedictos coram vobis, &c. venire faciatis & evocetis. Ac ipsos Testes & Defenden. præd. & eorum quemlibet per se separatim, &c.

To examine Witnesses to an Account.

Sciatis, &c. plurim. confidentes juxta directionem trium separal. ordin. coram nobis in Cur. Canc. nostra fact. int. R. S. quer. & T. W. Def. quor. unus Dat. gerit. &c. alter Dat. gerit, &c. & tertius Dat. &c. acceciam cujusdam Relation. super duos prior. ordin. fact. per J. F. Mil. unum Magistror. Cur. Canc. nostra inter partes præd. geren. Dat. &c. Assignavimus vos, &c. to Administrand. seu deliberand. pro Clarificatione Materia tangen. Computu. in ordin. & Relation. præd. mentionat. & express. diligent. Examinand. &c. Et ideo, &c.

A Commission to Examine a Defendant upon Interrogatories after Hearing.

Sciatis quod nos, &c. confidentes juxta directionem cujusdam ordinis coram nobis in Canc. nostra inter A. B. quer. & C. D. Def. nuper fact. geren. Dat. &c. ult. præterit. assignavimus, &c. Potest. & Authorit. ipsum Defendentem de & super quibusdam Interrog. presentibus interclus. diligenter Examinand. Et ideo vobis, &c. Et cum ill. sic feceritis eas nobis in Canc. nostram prædict. a Die, &c. facien. & proceden. in omnibus & singulis præmissis secundum directionem veramq; intentionem ordinis prædicti cujus Tenorem vobis Mittimus per latorem presentium.

Another Commission to examine Witnesses to an Account.

Sciatis quod nos, &c. confid. Assignav. vos, &c. & Damus, &c. Potest. & Authorit. in complemen. cujusdam ordinis in Cur. Canc. nostra int. A. B. Quer & C. D. Def. super auditu

audius Materie litis int. partes præd. fact. geren. Dat. &c. Testes quoscunq; tam ex parte præfat. quer. quam ex parte præd. Def. seu earum partium alterius de & super quibusdam Interrog. vobis, &c. ministrand. seu deliberand. ad proband. sive illustrand. materiam Computi inter partes præd. per ordin. præd. fiend. diligenter examinand. Et ideo, &c.

Anna, &c. T. M. Ar. un. Magist. Cur Canc. nostra salutem. Sciatis quod nos, &c. confidentes Assignavimus te ac in Complemen. quorundam ord. coram nobis in dicta Cur. Canc. nostra inter A. B. Quer. & C. D. & al. Def. nuper fact. & reddit. quorum unus Dat. gerit. &c. alter, &c. & ulterius, &c. Damus tibi plen. Potest. & Authorit. dictum Def. C. D. & Testes quoscunq; tangen. Comput. in ordin. præd. mentionat. vel aliquam aliam Rem. Comput. præd. tangen. de & super quibusdam Interrog. sive aptis Questionibus tibi per partes prædict. seu earum aliquam Ministrand. tam ex parte dict. quer. quam ex parte dicti Def. C. D. seu earum partium alterius diligenter Examinand. Et ideo tibi mandamus quod ad certos dies & loca quos ad hoc provideris Def. & Testes præd. coram te venire fac. & evoces ac ipsos & eorum quemlibet per se separatim de & super Interrog. sive aptis questionibus præd. tangen. computum præd. vel aliquam aliam Rem ut premititur super Sacramenta sua tact. per ipsos prius coram te sacrosanctis dei Evang. corporaliter præstand diligenter examinetis Examinationesq; suas super eisdem recipias; Nosq; de toto facto & progressu tuo in premissis per Relationem tuam in scriptis reddas certiores faciens in premissis juxta tenorem & veram intention. ordin. præd. Teste. &c.

A special Commission to a Master to examine the Defendant and Witnesses touching an Account.

Note.

Commissio ad examinand' Testes ex assensu partium omnium.

Cum quedam materia litis & differentie coram nob. in Canc. nostra inter, &c. nuper orta & mota & adhuc indecisa & indeterminata pendet. Sciatis quod nos de fidelitatibus & providis circumspeditionibus vestris plurimum confiden. assignavimus vos ac tenore presentium in complemen. cujusdam Ordinis geren. dat. &c. damus vobis tribus vel duobus vestrum plenam Potestatem & Authoritatem ex pleno

pleno libero & unanimi consensu & assensu partium præd. & earum cujuslibet testes quoscunq; de & super quibusdam Interrogat. per partes prædict. producend. tam ex parte prædict. quer. quam ex parte præd. def. vobis tribus vel duobus vestrum ministrand. seu deliberand. diligent. Examinand. Et ideo, &c (ut in general. Com.)

Commissio ad Emendandum Errores in Depositionibus.

Cum varie lites & Controversie nuper mot. & ort. sunt ac in Canc. nostra adhuc pendet indecis. & indeterminat. inter A. B. quer. & C. D. def. Cumque nos pro Examin. testium inter partes prædict. vobis tribus vel duobus vestrum Commissionem nostram nuper direximus ad cujus Executionem Examinatio E. F. super Interr. ei ex parte quer. exhibuit. non ingrossat. fuit Deposit. cujusd. A. B. unius alior. testium ex parte dicti quer. examinat. ac quedam depositiones dict. E. F. ingrossantur & certificantur per Error. & negligenc. trium Clericor. ad Ingross. depositiones prædict. apud Executionem Com. prædict. appunctuat. sicut per Certificat. dictor. J. K. & A. N. duor Commiss. præd. nob. plen. liquet & apparet Sciatis igitur quod nos de fidelitatibus & magis providis circumspectionibus vestris plurimum confiden. assignavimus vos ac tenore presentium Damus vobis tribus vel duobus vestrum Potestatem & Auctoritatem Depositiones per tres vestrum in Curiam nostram ante hac retorn. ac jam in presentibus interclus. & vobis retornat. diligent. comparand. ac perficiend. ac omnes Errores in eadem Commiss. corrigend. & emendand. juxta vetera Original. vobiscum seu aliquo vestrum jam remanen. Et Ideo vobis tribus vel duobus vestrum Mandamus quod ad certos diem & loc. quos ad hoc provideritis Execuc. hujus nostri Com. diligenter intendetis ac Depositiones si vobis missas circumspecte provide & sollicite comparat. corrigatis & perficiatis cum Originalibus prædict. Et cum sic feceritis tunc nobis in Curia Canc. nostre sine dilation. ubicunq; tunc fuerit de Toto facto & de Depositionibus prædict. sic comparat. correct. & presect. sub sigillis vestris trium vel duorum vestrum claus. distincte & aperte mittatis & hoc breve, Teste, &c.

A Com.

A Commission may be had to examine Witnesses beyond the Sea, and then if they be Foreigners, to examine them upon their Oaths, and the Oaths of skilful Interpreters, and in such Case, when 'tis apprehended the returning thereof by a Commissioner, or by some that may make Oath of the true keeping thereof, will be too much Delay, the Court will sometimes order that a Commission be delivered to a Master to send by the Post, and that he receive it back by the Post when executed. 2 Chan. Cas. 76.

The Form of a Commission to examine Witnesses in Places beyond the Sea, and for administering the Oath to an Interpreter.

*Sciatis quod nos de fidelitatibus & providis circumspetti-
onibus vestris plurimum confiden. juxta directionem duor.
separal. ordin coram nobis in Cur. Canc. nostre in Anglia
inter A. B. quer. & C. D. def. nuper fact. quorum unus
geret dat. &c alt. &c. assignavimus vos ac tenore presen-
tium Damus vobis tribus vel duobus vestrum plenam Po-
testatem & Authoritatem testes quoscunque de & super qui-
busdam Interrogat. tam ex parte prasat. quer. quam ex
parte prasat. def. seu ear. partium alterius vobis tribus vel
duobus vestrum ministrand. seu deliberand diligent. exa-
minand ac etiam pro meliori examinatione Testium pre-
dict. Damus vobis tribus vel duobus vestrum ulteriorem
Potestat. & Authorit. Sacramentum administrandi alicui
Interpretatori sive aliquibus Interpretatoribus fidel. &
linguis perit. per sacrosanct. Dei Evangelia Corporalit.
prasand. Interrogatoria predict. & Testium Depositiones
bene & fidelit. Interpretari si necesse fuerit. Et ideo vobis
tribus vel duobus vestrum mandamus quod (ad dom. man-
tional. prasat. C. D. in Civit. de A. in France in partibus
transmarinis ad certos dies quos ad hoc praverideritis 25 die
mensis stilo veteri prox. futur. conveniatis & assembletis ac
de diem in die. in Executione premissor. sedeatis) & testes
predict. coram vobis tribus vel duobus vestrum venire fac.
& evocetis ac Ipsos Testes & eorum quemlib. per se separa-
tim de & super Inter. prad. super Sacramenta sua tact.
per ipsos prius coram vobis tribus vel duobus vestrum Sa-
crosanctis Dei Evangelii corporalit. prasand. diligent.
examinetis ac omni executione premissor. diligent. intenda-*

Form of such
a Commissi-
on.

Or it may be
general if in
England, viz.
ad certos dies
& loco quos ad
hoc praverideri-
tis Testes prad.
coram vobis,
&c.

tis

Of Orders touching

itis Examinationesq; suas super eisdem recipiatis & in scriptis in Pergameno redigatis & cum illas sic ceperitis eas nobis in Canc. nostram predict. in Angl. sine dilatione ubicunq; tunc fuerit sub sigillis vestris trium vel duorum vestrum claus. distincte & aperte mittatis una cum hoc breve Teste, &c.

Several Orders of Court touching Commissions to examine Witnesses, &c. (*viz.*)

At the Rolls.	} Luna 15 die Junii Anno 13 Anna	
Master of the		Regina. Inter. A. B. Gen. Quer. &
Rolls.		C. D. Vid. Defend.

An Order for the Defendant to have a Commission to examine before Hearing of the Cause.

Upon Opening of the Matter this present Day unto this Court by Mr. H. being of the Defendant's Counsel it was alledged, That there hath been but one Commission in this Cause, of which the Plaintiff had the Carriage, and that the Defendant hath, since the Execution of the said Commission, discovered several Persons that are material Witnesses for the Defendant in this Cause, and the Plaintiff knowing the same doth press to have the same Cause heard this Term before the Defendant hath examined all her Witnesses, altho' Publication is not yet made of the Commission by the Plaintiff executed, nor hath the same been in Court above four Days, wherefore, and for that it is the Defendant's only Delay the Plaintiff having an Injunction upon Payment only of principal Money, it was prayed, That the Defendant may be at Liberty to renew the Commission, and have the Carriage thereof and Publication, pass the first Day of the next Term, and the Cause heard the same Term, and the Defendant will appear to hear Judgment *gratis* without serving of Process, and the Cause be put off from being heard this Term, which the Court held reasonable, and doth order the same accordingly.

Lord

Lord Chancellor. *Jovis 4 die Julii, &c.*

Whereas by an Order of 22d May last, it was ordered, That the Plaintiff should take out a new Commission, and examine his Witnesses over again, and that the former Commission should stand suppress'd; but if any of the Witnesses formerly examined should die before the Execution of the new Commission, their (former) Depositions to stand. Now upon Opening of the Matter this Day unto this Court by Mr. R. of Counsel, with the Plaintiffs, it was prayed, That this Cause might be forthwith set down to be heard this Term, the Matter in Question being only Matter of Account; but Mr. S. of Counsel with the Defendant alledging, That the Defendant could not examine one Witness in the Cause, because the Plaintiff did not take out a Commission according to the said Order, and that the Defendant hath many Witnesses to examine in *Lancashire*, who cannot attend to be examined in Court, and upon hearing what was alledged on either Side it is ordered, That the Defendant do take out a Commission for Examination of Witnesses, according to the said Order, and that Publication do pass the first Day of the next Term, and the Cause be heard the same Term.

An Order in Confirmation of a former Order for taking out a Commission to examine Witnesses, &c.

Upon the Defendant's humble Petition this Day preferred to the Master of the Rolls, and for the Reasons therein contained, it is ordered, That the Defendants be at Liberty to take out a new Commission for Examination of Witnesses, returnable the second Return of the next Term, and to execute the same on *ten Days Notice*, and that *W. B. Esq;* do stand Commissioner for the Defendants in the Room of *R. L. Esq;* who refused to act therein, whereof the Plaintiff's Clerk in Court or Agent is forthwith to have personal Notice.

An Order (upon Petition) that the Defendants do take out a new Commission to examine Witnesses.

Whereas

Order that
new Interro-
gatories may
be added to
any new Wit-
nesses till the
last Day of
Publication.
7 Nov. 9 W. 3.

Whereas in this Cause some Question did arise touching the Course of the Court, whether any new Interrogatories might be exhibited to new Witnesses in Court after a joint Commission executed in the Cause, and the Master of the Rolls having heard what the Six Clerks and the Examiners could say touching the same, and the Six Clerks affirming, That by the Course of the Court, *No new Interrogatories may be exhibited in Court after a joint Commission executed in the Country*, and the Examiners averring, That it hath always been the constant Course of the Court, *That new Interrogatories may be exhibited in Court for the Examination of any new Witnesses, as often as the Client had occasion, till Publication, what Commissions soever there had been in the Cause*, and that the Right Honourable the Lord Keeper had so declared himself at the publishing of some Ordinances; the Master of the Rolls did this Day declare in Court, That he had perused the Orders of this Court, and the Ordinances made by the Right Honourable the Lord Keeper, and doth not find any Thing therein to restrain the exhibiting of new Interrogatories into Court at any Time before Publication for the Examination of new Witnesses, and that he having had Conference with the Lord Keeper for his Opinion therein, his Lordship was clear of Opinion, *That new Interrogatories may be exhibited into Court for the Examination of new Witnesses at any Time before Publication, altho' there have been joint Commissions formerly executed in the Cause, and therefore this Court doth now declare the same to be the Course of the Court herein, and doth order that the Order of Reference to Sir J. F. for suppressing of such Depositions taken in this Cause be discharged, and a vacat entred thereupon.*

Order that
the Exami-
ners shall not
deliver Co-
pies of any
Deposition
without In-
terrogatories,
examination.

Whereas Information was now made to the Court by Mr. F. being of the Defendant's Counsel, That the Defendant having been once sworn to answer to Interrogatories administred on the Plaintiff's Behalf according to a former Order, and being after that Time ordered by this Court to be further examined, and that a Witness should not be new sworn upon a Re-

he repaired to the Examiner to be examined accordingly, and could not there be so examined, for that the said Examiner refused to examine him unless he would have been first sworn again, which this Court thinketh he ought not to be, for that he was not to be examined upon any new Interrogatories, but only upon the former whereunto he was first sworn, and because the Defendant could not be examined speedily, he the said Defendant being High Sheriff of the County of, &c. was compelled thro' other earnest Occasions to go down into the Country before he was secondly examined, and yet the Plaintiff procured forth an Attachment, as tho' he had in Contempt of this Court refused to be examined; wherefore, and because the Defendant hath been since examined, upon his first Oath, the Defendant desired to be allowed his Costs for the said wrongful Vexations; It is thereupon ordered, That the Matter shall proceed to a Hearing in this Court, and that in the mean Time, as well the said Costs demanded by the said Defendant, as also such Costs as the Plaintiff demandeth for the Answers, shall be suspended at which Time Consideration shall be had whether any the Costs shall be paid or not, or by whom, &c.

Whereas upon Information made the fourth Day of this Instant Month, on the Plaintiff's Part, That the second Commission, whereby the Defendant's Commissioners alone examined certain Witnesses, was obtained after the Rule for Publication was past, and that the Defendant had by that second Commission re-examined *J. H* and *F. K.* tho' they had been examined on their Part by the first Commission, by which first Commission, all the Witnesses which the Defendant then produced were examined, and furthermore, that all, or the most Part of the Examinations taken by the second Commission, tend to Matters impertinent to the Title, and to impeach the Credit of the Witnesses formerly examined for the Plaintiff, it was then ordered, that if good Cause should not be shewn to the contrary on the Morrow Seven-night, then all the Depositions taken by the second Commission of any Witnesses formerly examined for the

Order that a Witness may be further examined upon new Directions to any Point he had not formerly been examined unto.

the Defendant should be suppress'd; and whereas on the 12th of this Month, the Defendant informed, That the said second Commission was granted by Consent of the Plaintiff's Counsel or his Clerk, and that it was then published, and Copies taken forth, and furthermore, that the aforesaid two Witnesses which were examined for the Defendant by both the said Commissions, were not by the last Commission examined upon any the Points, whereupon they were examined by the first Commission, but upon other Matters, it was thereupon ordered, That so much of their Examinations only, as the Counsel should find to be taken upon Points, whereupon they were examined by the Commission, should be suppress'd; And forasmuch as this Court was this present Day informed by Mr. W. being of the Plaintiff's Counsel, That the Plaintiff's Clerk did not give any Assent to the Taking forth of the said new Commission, and that the Examinations taken by the second Commission were not published as the Defendant alledged they were on the said fourteenth Day of this Instant Month, so as both the said Informations whereupon the said Defendant obtain'd the said Order of fourteenth Instant were untrue; it is therefore ordered, that Sir R. H. one of the Masters of this Court, shall examine the same, and if both were untrue, the Defendants to pay the Plaintiffs such Costs as Sir R. should tax, and all the Examinations taken by such second Commission to be suppress'd; but if the Informations were true, then so much of the Examinations taken by the said second Commission, as the Counsel on both Parts shall agree, or the Master find are not taken upon any of the Points which were examined by the first Commission, shall stand good and be allow'd of, and the rest be suppress'd.

Order to renew a Commission for Examination of Witnesses, and to injoin the Plaintiff not to sell Timber, or permit waste,
3 Junii 9 W. 3.

Whereas by an Order of, &c. last, for that the Defendant's Commissioners joined in Examination of the Plaintiff's Witnesses upon a joint Commission, the Defendant examining no Witnesses of his own, nor exhibiting any Interrogatories at that Commission, but afterwards exhibited Interrogatories in Court, and examined his Witnesses thereupon; which, as was al-

was

was ordered, That the Six Clerks not towards the Cause should consider of the Matter, and give Directions therein as they should think fit, who thereupon certified, That they conceived the Defendant's Witnesses were unduly examined, and ought to be suppress'd, but left the Plaintiff at Liberty to examine three Witnesses in an Affidavit named upon his former Interrogatories. Upon opening of the Matter this Day by Mr. W. being of the Defendant's Counsel, and upon reading of the Six Clerk's Certificate, and upon shewing an Affidavit made by the said Defendant, whereby it appeareth, That there hath been no Discovery by the Defendant's said Commissioners upon any the Proceedings upon the former Commission, but the Plaintiff would by that Suggestion only have proceeded to Hearing, and barred the Defendant from examining any Witnesses, which his Lordship declaring to be a mere Surprisal of the said Defendant, doth allow of, it is thereupon by this Court ordered, That the Plaintiff be at Liberty to renew his Commission for the Examination of his said three Witnesses in his Affidavit named according to the Six Clerk's said Certificate; but that the Defendant's Depositions already taken shall stand, or the Defendant be at Liberty to examine *de Nova*, at the Election of the Plaintiff, to be forthwith made, that the Defendant may not be surpris'd in the Examination of his Witnesses; and the Plaintiff is enjoined not to fell any more Timber or Trees growing upon any the Jointure Lands of the said R. K. nor to suffer any waite in the Houses, &c. thereunto belonging, until this Cause shall receive a Hearing in this Court.

Forasmuch as the Lord Chancellor was this present Day informed by Mr. C. being of the Plaintiff's Counsel, That a Commission being awarded out of this Court in *Hill. Term* last, for the Examination of Witnesses on both Sides, which was executed and returned into this Court this last Term; the said Defendant supposing he had necessary Witnesses yet to examine hath taken out a Commission this Term to the former Commissioners, and caus'd it to be sealed with-
An Order for the Six Clerks not in the Cause to examine touching the Execution of a Commission on to examine Witnesses.

nesses, and to certify irregular Proceedings, 16 *Mail* 10. *W.* 3.
out

out the Plaintiff's Interrogatories before he had convenient Warning thereof, who designed to have inserted therein his Interrogatories, as having Cause to have examined also more Witnesses as well as the Defendant, and would have joined therein with the Defendant, but that the Defendant sent away the Commission before the End of the Term, and therefore it was prayed, That a *Superfedeas* be awarded for discharge of the said Commission. It is therefore ordered, That four of the Six Clerks which are not towards this Cause, shall consider of the Proceedings in the Cause, and that if they find that by the Course of the Court, the Plaintiff might have joined in the Examination of his Witnesses as well as the Defendant, and that the Defendant did make such haste in sending away the Commission before the Plaintiff had denied or refused to join with him, or to put any Interrogatories therein, then a *Superfedeas* shall be awarded for that Purpose, or else the Proceedings thereupon, if any be, by the Defendant shall be suppress'd; and because his Lordship did now much mislike, That the Six Clerks, who are best experienced with the Course and Proceedings of this Court, did not take Order among themselves both in this and all other like Cases concerning the Course of the Court, as his Lordship hath often heretofore appointed them, his Lordship hath now ordered, and once again commanded that for the greater Ease, and speedier Dispatch of the Subjects Business, and for avoiding unnecessary Charges of Motions, That such four of the Six Clerks as are not towards the Cause, from Time to Time, as the Occasions of the Clients shall require, shall examine and consider as well of the disorderly going out of any of the ordinary Process of this Court, as also of all other Matters concerning the Course of the Court, and take Order therein, if they can, without putting the Clients to any further Trouble or Charges of Motions, and if they cannot order or determine the same amongst themselves, that then they certifie unto his Lordship their Differences therein, who will thereupon take such Order therein as shall be meet.

Upon

Upon Motion this Day made unto this Court by Mr. S. being of the Plaintiff's Counsel, it was alledged, That the said Plaintiff had several material Witnesses in this Cause, that they were aged and infirm, and not likely to live long, as by divers Affidavits appear, and that the Plaintiff's Bill was to perpetuate their Testimony; and to delay the Plaintiff's Proceedings therein, the Defendant H. is in Contempt for not appearing, and the Defendant R. and S. have craved a Commission to answer in the Country: It was therefore prayed, That the Plaintiff might be at Liberty to take out a Commission to examine his said Witnesses *de bene esse*, which is ordered accordingly:

Order, That the Plaintiff may be at Liberty to take out a Commission to examine Witnesses *de bene esse*.

By which last Order it appears, That the Examination of Witnesses *de bene esse*, is of the same Nature with examining in *perpetuam Rei Memoriam*; for no such Examination is to be made use of till after the Death of the Party examined, &c. In which Case his Depositions may be made use of either at Law or in Equity. *Vide* the next Chapter.

Or, in *perpetuam Rei Memoriam*.

Note, By the foregoing Orders it may appear, That this Court doth often, on Cause shewn, by Motion, &c. take a Liberty of dispensing with their own Rules and Orders, as in the Instance of fourteen Days Notice of executing a Commission to examine, the Court abridges or restrains it to eight or ten Days, &c.

Rules and Orders dispens'd with.

C H A P. X.

Of the Method of examining Witnesses, either by Commission, or in Court; and of Examinations in perpetuam Rei Memoriam, de bene esse, &c.

Directions
for executing
Commissions
to examine
Witnesses.

WHEN the Commissioners for either Party have received a Commission for examining Witnesses, &c. as aforesaid, they must give Notice of the Time and Place of executing such Commission by a Warrant or Notice to the Parties, their Solicitor, &c. *contra*, under their Hands, in this Form, viz.

Notice of the
Execution to
the Party.

Beyond Sea.

“Whereas we have received a Commission issuing out of her Majesty’s High Court of Chancery, to us and J. K. and L. M. directed for the Examination of Witnesses, in a Cause there depending between A. B. Plaintiff, and C. D. Defendant; These are to give you Notice that we will execute the said Commission at the House of N. O. known by the Sign (or Name) of the *White-Horse*, situate in --- street, of the City of E. in the County of D. (or, if beyond Sea, situate in such a Street, in such a City, in Holland, France, Spain, &c.) on Wednesday, being the ---- Day of (*Stilo novo*, if in those Parts where that Stile is used) now next coming, at the Hour of ten a Clock in the Forenoon of the same Day, where you, together with the Commissioners and Witnesses concerned for the Plaintiff (or Defendant) may be present if you please. Given under our Hands this --- Day of, &c.

To our loving Friend
Mr. S. T. These.

Your loving Friends,
E. F.
G. H.

This

This Note must be delivered to the Party to whom Notice is to be given fourteen Days before the Time of executing the Commission, (except a shorter Time be appointed by Order, as aforesaid;) against which Time the Witnesses also are to have Notice of the Time and Place, and to be desired to appear and depose their Knowledge to each Interrogatory. And the Notice to be given to the Witnesses, is in this Form, viz.

Between A. B. Plaintiff, and C. D. Defendant :

" Whereas, &c. (as before, to) C. D. Defendant; Notice to the
 " And whereas we are informed, That you whose Witnesses.
 " Names are here-under written, are material Wit-
 " nesses for the Plaintiff (or Defendant) in this
 " Cause: These are therefore, by vertue of the said
 " Commission, to will and require you, and every of
 " you, personally to be and appear before us, or a-
 " ny two or three of the said Commissioners, at the
 " House of N. O. &c. *supra*, to same Day, then and
 " there to be examined, and to testify your Know-
 " ledge for and on Behalf of the said Complainant:
 " And you are then and there to attend, and not to
 " depart until you have been examined on the Part of
 " the said Complainant. And herein you are not to
 " fail. Given under our Hands, &c.

Your loving Friends,

And direct it to such Wit-
 nesses as are to be exami-
 ned.

E. F.

G. H.

J. K.

When the Commissioners are met at such Time and Place according to the Notice, let the Commission be opened, (which till that Time must remain sealed) that the Commissioners may see that they have an Authority and sufficient Warrant to justify their Proceedings.

Opening the
Commission.

Then having a Clerk or two ready, let the Clerks draw up the Depositions in Paper, and let each Witness set his Name to each Deposition; which being done, they must be afterwards ingross'd in Parchment, and let the Stile, or Title of the Depositions be first written in Paper, and afterwards ingross'd in Parchment, thus, viz.

Taking and
Ingrossing
the Deposi-
tions.

Title of the Depositions. " Depositions of Witnesses taken at E. in the County of D. at the House of N. O. commonly called or known by the Name or Sign of --- on Wednesday the --- Day of --- by virtue of a Commission issuing out of her Majesty's High Court of Chancery, to us directed for the Examination of Witnesses in a Cause there depending between A. B. Complainant, and C. D. and others, Defendants, on Behalf of the Plaintiff.

Persons to depart. And then call a Witness, and cause all Persons but the Commissioners, their Clerks, and the Witnesses to be examined, to depart the Room; and then give the Witness his Oath, as follows:

Witness his Oath, &c. " You shall true Answer make to all such Interrogatories as shall be administered to you on the Part and Behalf of C. D. and others Defendants, to the Bill of Complaint of A. B. Complainant; and therein you shall speak the Truth. So help you God. *Kiss the Book.*

Name, Addition, Age, &c. Which being done, let the Witness's Name, Place of Abode, Addition and Age, be writ in the same Paper, under the Title of the Depositions; thus, viz.

" P. R. of L. in the County of D. Merchant, aged about sixty Years and upwards, sworn and examined on the Behalf of the Plaintiff (or Defendant) saith as followeth:

1. *Imprimis*, To the first Interrogatory, this Deponent saith, That, &c.

2. *Item*, To the second Interrogatory, this Deponent saith, &c.

And so go through the rest of the Interrogatories.

Commission, &c. how returned. When all the Witnesses are examined, let their Depositions be ingross'd in Parchment, and examin'd with the Papers; and let the Commissioners sign each Schedule of the Parchment, as also the Interrogatories, and then bind them up together with some small String or Cord, and let every one of the Commissioners

ners present at the Examination, set their Seals upon it: And then one of the Commissioners must deliver it personally to the Person that brings it up, who is to deliver it to a Master in *Chancery*, and make Oath before him, That he received the said Commission, &c. from the Hands of one or more of the Commissioners therein named, and that it has not been opened or altered since he received it.

Oath of the Person that brings it.

And note, The Commissioners before they seal up the Commission, &c. are to indorse thereon these Words, viz. *Executio istius Commissionis patet in quibusdam Schedulis (or, in quadam Scheda) huic Commissioni annexat*: And thereto subscribe their Names.

Commission indorsed.

And let the Paper Draught be also bound up, and sealed as before, and delivered to one of the Commissioners to keep.

Paper Draught sealed up.

And if there be any Writings directed by the Commission to be proved. let the Commissioners give Directions to bring them in for that Purpose.

Writings to be proved.

Of Examining Witnesses in Court; i. e. by the Examiners.

ALL Witnesses are ordinarily to be examined before Hearing of the Cause; and this is done either by Commissioners in the Country, (i. e. two at the least) as before is shewn; or otherwise, *By the Examiners in their Office*, which is called *Examining in Court*.

Two Ways of examining: 1. In the Country. 2. In Court.

These Examiners are two, and have their Office near the Chapel of the *Rolls*; where by themselves, or Deputies, they examine upon Oath, upon Interrogatories filed, the Witnesses on both Sides, that are brought before them in any Cause, as also Parties in Contempt; and do put in Writing, and file the Depositions or Answers to such Interrogatories: Which Depositions or Answers, they are to keep close and private till Publication. See their Oath, &c. *ante* pag. 26, and 34.

Two Examiners:

Their Business

Ord. Chan. 254.

But the Witnesses, or Parties to be examined, must be first sworn before a Master in *Chancery* to answer truly to the Interrogatories; and their Names who

Witnesses, &c. how sworn.

Of Examining Witnesses

And how examined.

are sworn, must be inserted in the Interrogatories by the Master, and then they may be examined,

The Court knowing of what great Consequence it is to have good Examiners, in whom it reposes much Confidence, have ordered, That the Examiners themselves are, *in Person*, to be diligent in the Examination of Witnesses, and not intrust the same to mean or inferior Clerks; and are to take care to hold the Witnesses to the Point interrogated, and not to run into Extravagancies, and Matters not pertinent to the Question, thereby wasting Paper for their own Profit, of which the Court expects a strict Account. *Ord. Chan. 120.*

Examiners
Deputies
Oath.

The Examiners are to employ under them none but Persons of known Integrity and Ability, who shall take an Oath, *Not to deliver, or make known directly or indirectly to the adverse Party, or any other, save the Dependant, who comes to be examined, any of the Interrogatories delivered in to be examined upon, or any of the Examinations by him taken, or remaining in the Examiner's Office; or any Extract, Copy or Breviate thereof, before Publication be thereof passed, and the Copies thereof taken.*

Punishment
of the B. each
thereof.

And if any such Deputy, Clerk, or Person so employed, shall be found faulty in the Premises, he shall be expelled the Office, and the Examiner, who so employ'd him, shall be also answerable to the Court for such Misdemeanor, and to the Party grieved, for his Costs and Damages sustained thereby; and such Solicitor, or other Person who shall be discovered to have had a Hand therein, shall be liable to such Censure for the Offence, as the Court shall find just Cause to inflict upon him. *Ord. Chan. 129.*

Pursuant to which Order, an Examiner's Clerk was the 29th of April 1687. suspended for intrusting one who was no sworn Clerk of the Office, to transcribe Part of the Depositions of a Witness, before the Witness had perfected his Examination, or Publication was past in the Cause. *Ord. Chan. 215.*

Examinations
to be after
Answer, and
before Publication.

After a perfect Answer is in, &c. either Party, until Publication is past, may examine in Court what Witnesses he pleases, that are not before examined; but not before Answer, without special Order. *Ord. Chan. 38.*

After

After Publication neither Party shall examine any Witnesses but by special Order, upon good Cause shewn on an Affidavit by the Party desiring to examine; that neither he, nor any for him by his Direction or Privy, or to his Knowledge, hath read, seen or been informed of any the Depositions already taken in the Cause; and that till the Witnesses (he desires) be examined (if the Court pleases to order they shall be so) he will not read, nor willingly see, hear, or be informed of those Depositions, nor shall any for him, or by his Order, Privy or Direction read, see, hear, or be informed of the same.

Not after Publication, without Cause on Oath.

An Affidavit was, That he had not seen, &c. nor should or would any for him, &c. see, &c. The Court ordered him to amend (if he thought fit) his Affidavit, and add, That he also would not see, &c. if he meant to have what he moved for, granted.

Affidavit defective.

Upon such Affidavit after Publication, and some good Cause shewn either upon Oath, or the Certificate of Commissioners, why the Party could not get his Witnesses examined in the Ordinary Time; Leave is frequently granted to examine by a Time prefix'd, provided the Party shall not in the mean time see, &c. any of the former Examinations.

Examinations after Publication.

Note, After a Copy of the Rule or Order whereby Publication passed, is delivered to the Examiner, no Witnesses, sworn before Publication shall be by him examined in the Cause, *Ord. Chan.* 126. So that before such Notice to the Examiner, it should seem he may.

As the Court upon special Reasons shewn, will order a Witness to be examined after Publication; so it will after Hearing, when it is *ad informandum Conscientiam Judicis*, 1 *Chan. Cas.* 228. For after Hearing, Witnesses have been often ordered to be re-examined to clear the Matter.

After Hearing.

And Matters of Account may be examined either before or after Hearing.

Where any Party shall ground a Motion or Petition on an Affidavit, of his having material Witnesses to examine, whereby to gain longer time to examine such Affidavit, shall not only contain the Names of the chiefest of such Witnesses; but also the Points on which such Witnesses are desired to be examined, to the end the Court may see whether such Points be material to

Time given.

be examined, and whether before or after Hearing.
Ord. Chan. 207.

After an insufficient Answer.

'Tis said, if an Answer is in, and Witnesses examined, and then the Answer is reported insufficient, and a further or better Answer is put in, such Examinations will be suppress'd, and not allow'd of at the Hearing.

Method of Examination and Notice.

No Witnesses shall be examined in Court without the Privy of the adverse Party, or his Clerk in Court to whom the Party so to be examined shall be shewn, and Notice of his Name and Place of Dwelling delivered in Writing by those that shall produce him to the said Clerk in Court; and the Examiner is to take Care, and be well satisfied that such Notice be given, and then shall add to the Title of such Witnesses Examinations the Time of such Notice given, and the Name of the Persons by and to whom it is given, that so at the Hearing of the Cause the Suitor be not delayed on Pretence of want of Notice. *Ord. Chan. 126.*

Seriatim.
Deponent not to read or hear read the Interrogatories.

The Examiner is to examine the Deponent to the Interrogatories *seriatim*, and not to permit him to read over, or hear read any other Interrogatory till that in his Hand be fully finished, that so by this Means the Truth may not be eluded or concealed, which it might more easily be, if a Witness knew every Question that would be asked of him before he answered any. *Ord. Chan. 128.*

Nor to pen his own Depositions.

Much less is he to suffer the Defendant to have the Interrogatories, and pen his own Depositions, or to depart after he hath heard an Interrogatory read to him, till he hath perfected his Examination thereunto, *Ibid.*

Witness refusing, &c.

If any Witness shall refuse to conform himself, the Examiner is thereof to give Notice to the Clerk on the other Side, and to proceed no further in his Examination without the Consent of the said Clerk, or an Order made in Court to warrant his so doing *Ibid.*

Testimony invalidated.

The Examiner shall not examine any Witness to invalidate the Credit of any other Witness, but by Special Order of Court, which is to be sparingly granted, and upon Exceptions filed with the Examiner

ner (without Fee) and Notice thereof given to the adverse Party or his Clerk, together with a true Copy of the Exceptions at the Charge of the Party so examining. *Ibid.* 128.

In examining Witnesses the Examiner shall not use any idle Repetitions, or needless Circumstances, nor set down any Answer to the Question, to which the Examinant cannot depose other than thus; *To which Interrogatory this Deponent cannot depose.* And if such Impertinencies be observed by the Court, the Examiner is to recompence the Charge thereof to the Party grieved, as the Court shall award. *Ord. Chan.* 130.

Idle Repetitions and Circumstances to be avoided.

No Re-examination of Witness, though upon the same Interrogatories, and that he spoke uncertainly on the first Examination, is to be without Leave of the Court. *Vide Prox. Cap.*

No Re-examination.

A Master examined one Witness three Times to a Matter of Account, and the Depositions was suppress'd. *2 Chan. Cases.* 79.

Several Witnesses being examined in a cross Cause without the other Sides knowing of it, the Court ordered Publication to stay till Notice should be given the other Side where the Witnesses lived, and till they might be examined on his Behalf.

Examinations in cross Causes.

Where Publication was past in one cross Cause between the same Parties upon the same Titles to Lands, the Court would not suffer the Plaintiff in the other Cause to examine any Witnesses. *Pr. H. Ch.* 182.

And, *Note*, 'tis said, If a Witness be examined by Commissioners in the Countrey, he shall not be examined again here in Court without a special Order to that Purpose.

Witness examin'd by Commission, not examin'd in Court.

Of Examination of the Parties themselves.

Though Witnesses have been examined in a Cause, yet you may afterwards examine the Defendant on an Order to that Purpose; and this may be done either before or after Hearing.

Parties examined, and when.

So either Party may be examined to an Account, or to a particular Thing after the Hearing.

In Account.

'Tis

Defendants
Depositions
conclusive,

'Tis said, If, when a Cause is at Issue, the Plaintiff desires the Defendant may be sworn and examined upon Interrogatories as a Witness, he must ordinarily stand to the Defendant's Depositions as conclusive, or else the Court will not compel the Defendant to be examined.

Or not.

But if some new Act be done by the Defendant after Issue join'd, as making a Feoffment or Release by Covine, or such like, the Plaintiff may compel the Defendant to be examined without being concluded.

Defendant
examined on
Interrogato-
ries.

Where it was moved, That the Defendant, who had not sworn fully by his Answer, might be examin'd upon Interrogatories, upon an Account decreed (the Plaintiff for saving Charges, not having excepted to his Answer) the Court inclined to grant it; but there wanted Notice of the Motion.

Not after a
Decree en-
rolled.

After a Decree enrolled in which was no Order to examine the Defendant upon Interrogatories, the Court would not order him to be examined to the Discovery of Deeds. 2 Chan. Rep. 10.

No Witnesses
to prove
perjured.

Though you may examine a Defendant after Witnesses have been examined in a Cause, yet it is said to be a Rule, That where a Defendant is first examined, you shall not afterwards examine Witnesses thereby to convict or prove him guilty of Perjury.

Of Examining Witnesses in perpetuam Rei Memoriam.

Examinations
in perpetuam
Rei Memoriam,
&c.

Witnesses are sometimes examined in this Court in perpetuam Rei Memoriam, which is done to preserve their Testimony in case of Death, &c. and their Examinations may be taken either in Court or by Commission; and the Method of obtaining such a Commission is thus, viz.

A Commissi-
on for it, how
obtained.

First, You are to exhibit a Bill, and therein set forth your Title to the Thing, and that the Witnesses to prove it are old, infirm, sick, and not like to live long, or that they are going beyond Seas, &c. whereby you are in Danger of losing their Testimonies, &c. and therefore pray a Commission into the Countrey to examine them, and a Subpœna to the Parties interested

to

to shew Cause, if they can, to the contrary. The Form of such a Bill follows.

HUmblly complaining, &c. Your Oratrix Dame *M. O.* Relict and Executrix of the last Will and Testament of Sir *E. O.* late of *L. in Com. M.* Baronet, for and on behalf of her self and her two Daughters *E.* and *F.* Infants, under the Age of 6 Years, being Daughters and Coheirs of the said Sir *E. O.* That the said Sir *E. O.* being in his Life-time seised in his Demesne as of Fee-Simple of and in divers Manors, &c. lying, &c. and elsewhere; and being so seised as aforesaid, did on or about, &c. make his last Will and Testament in Writing, and amongst several other Devises and Requests, he the said Sir *E. O.* did devise and bequeath all his Real Estate in the Counties of *M. H.* *G.* or elsewhere to the eldest Son he should have living by your Oratrix at the Time of his Death, and to the Heirs of such Son, and in case he should have no Son living at the Time of his Death, he the said Sir *E. O.* did give, devise and bequeath all his said Real Estate to such Son, as your Oratrix should happen to be with Child with at the Time of his Death: And if it did happen that he should die without any Issue Male, then his Will was, And he the said Sir *E. O.* did give, devise and bequeath all his said Real Estate to such Daughters as he should have living, or that your Oratrix should happen to be with Child with at the Time of his Death, and to the Heirs of such his Daughters: And if it happen that he should die without any Issue lawfully begotten, then the said Sir *E. O.* did give, devise and bequeath all his said Real Estate to your Oratrix, his then Wife, for and during the Term of her Natural Life; and from, and after her Decease, and in Default of any Issue of his own Body, his Will was, and he did thereby give, devise and bequeath all his said Real Estate to his well-beloved Cousin *C. O.* Gent. the third Son of his well-beloved and dear Uncle *W. O.* Esq; then late of *T.* in the aforesaid County of *M.* and to the said *C. O.* for ever. And the said Sir *E. O.* did likewise by his said Will give, devise and bequeath to your Oratrix all his Goods and Chattels, Money, Plate, Household-stuff, and other

The Form of a Bill in order to examine in perpetuam Rei Memoriam.

Perfo-

Personal Estate whatsoever; and did thereby direct your Oratrix to pay and discharge all such just Debts, as he should owe at the Time of his Death. And his Will was, That your Oratrix should receive all the Rents, Issues and Profits of his Estate for the Space of Ten Years towards the Payment of his Debts, and the Maintenance of his Children; and if your Oratrix should happen to die within the Ten Years after his Decease, and before all his Debts were satisfied, then his Will was, and he did devise and bequeath all his Manors, Lands, Tenements and Hereditaments, and all his Real Estate whatsoever to his well-beloved Uncles *C. O. of L.* and *T. O. of B.* in the said County of *M.* Esq; and to their Executors and Administrators, and to the Executors and Administrators of the Survivor of them, to hold for the Term of Ten Years to commence from the Day of his Death, for and towards the Payment of his just Debts, and the Maintenance of his Children, until they should attain unto the Age, wherein to make Choice by Law of their Guardians; and at the End of the said ten Years, or as soon as his Child or Children could by Law call for and take an Accompt, he did direct the said *Mr. C. O.* and *Mr. T. O.* to give an Accompt of their Receipts and Disbursements of, for, or concerning his Estate, in which Accompts his Will was, That all reasonable Allowances and Charges be made, given and allowed to the said *Mr. C. O.* and *Mr. T. O.* and to their Executors and Administrators: And he did thereby revoke all former Wills by him the said *Sir E. O.* made, and did nominate, constitute and appoint your Oratrix his then Wife, his sole Executrix of his last Will and Testament, reserving to himself a Power in case of sudden Sickness, to add or alter any Part of his last Will by Codicil in Writing thereunto to be annexed; And your Oratrix farther sheweth unto your Lordship, That the said *Sir E. O.* on or about the eighth Day of *May* 1682. by Virtue of the Power reserved to himself by his Will bearing Date as before-mentioned, did make a Codicil, whereby he the said *Sir E. O.* did give and bequeath unto *Mrs. D. O.* and *Mrs. L. O.* one hundred Pounds in Money for two Years last past, before the Date of the Codicil, and fifty Pounds yearly during

during their natural Lives, to be equally divided between them, and this to be paid to their lawful Attornies or Assigns upon every twentieth Day of *June*, and upon every twentieth Day of *October* yearly, by even and equal Portions, if it should be lawfully demanded, and to continue during the Life of the longest Liver of them both: And he did also give and bequeath unto the Poor of the Parish of *L.* the Sum of Ten Pounds, to be paid within three Months next after his Decease; and did give and bequeath unto the Church of *L.* 10 *l.* and did give and bequeath to Mr. *T. B.* Five Pounds yearly during his Life; and did give and bequeath to Dr. *J. J.* Twenty Pounds, a Mourning Suit and Ring; and did give and bequeath unto *J. T.* his Servant, the Farm he now enjoys during his natural Life, and a Mourning Suit and Ring; and did give unto *T. A.* his Servant Ten Pounds, a Mourning Suit and Ring. And your Oratrix farther sheweth unto your Lordship, That the said Sir *E. O.* having signed, sealed, published and declared his said last Will and Testament and Codicil in the Presence of seven or more credible Witnesses, and the said Witnesses having subscribed and attested the said last Will and Testament and Codicil of the said Sir *E. O.* in the Presence of him, the said Sir *E. O.* did deliver his said last Will and Testament to your Oratrix to be preserved and kept; and shortly after, that is to say, on or about the eighth Day of *May* 1682. the said Sir *E. O.* leaving behind him your Oratrix *M.* and his said two Daughters *A.* and *F. O.* And your Oratrices did well hope there could be no Pretence of Cavil about the said last Will and Testament and Codicil of the said Sir *E. O.* and that your Oratrices should quietly hold and enjoy the Estate Real and Personal of him the said Sir *E. O.* according to the true Intent, Meaning and Purport of his said last Will and Testament, the said Sir *E. O.* the Testator being the only Son and Heir of Sir *E. O.* of *L.* aforesaid. But now so it is, may it please your Lordship, that Sir *J. O.* Baronet, next Brother to Sir *E. O.* deceased, Father to the Testator, doth pretend Title to the Manors and Lands of your Oratrix's Husband and Oratrices Father, and doth give out in Speeches, that your Oratrix's

trix's late Husband had no Power to devise the said Estate by his Will; and at other times, That if he had Power, that he made no Will, nor any Devise thereof; and in case he made any Will, that he was not *compos Mentis*, or of sound and disposing Memory at the making thereof: In tender Consideration whereof, and forasmuch as your Oratrix and Oratrices Witnesses, or most of them, that can prove the said last Will and Testament, and Codicil of the said Sir E. O. are aged and infirm, and not like to live long, &c. and to the Intent she may examine them in this Court for Preservation of their Testimony for Proof of the said Will and Codicil, and that the same Will and Codicil, by which the said Manors and Lands are devised, may be produced by your Oratrix and Oratrices in this Honourable Court, and their Evidence, Depositions and Testimony thereof, and touching the same, may be here preserved, for the making out your Oratrix's and Oratrices Title to the said Manors, Lands and Premises: And to the end your Oratrix's and Tenants Possession in the said Manors, Lands and Premises may by this Honourable Court be quieted and established, and that your Oratrix and Oratrices may be relieved in all and singular Premises: May it please your Lordship, the Premises considered, to grant unto your Oratrix and Oratrices her Majesty's Commission under the Seal of this Honourable Court, and directed to (A. B. and C. D.) or to such Persons, as your Lordship shall think meet, inhabiting in the said County of M. for the Examining of your Oratrix's and Oratrices said Witnesses *in perpetuam Rei Memoriam* for the Proof of the Matters aforesaid; and also her Majesty's most Gracious Writ or Writs of *Subpœna* directed to the said Sir J. O. Baronet, thereby commanding him at a certain Day therein limited and expressed, personally to be and appear before your Lordship in his High and Honourable Court of Chancery, to make Answer unto all and singular the Premises aforesaid, and to stand to and abide such Order therein, as to your Lordship shall seem meet,

Prayer of a
Commission
to examine.

And Writ of
Subpœna.

And your Oratrix and Oratrices shall ever
pray, &c.

And

And after the Bill is filed, the Court on *Affidavit* made, That the said Witnesses are old, infirm, going beyond Sea, &c. if they are in the Countrey, will grant a Commission according to the Prayer of the Bill; or if they are within 10 Miles of London, will order them to be examined in Court de bene esse. And the Form of such Commission is thus, viz.

Anna, &c. Salutem. Cum. A. B. nuper exhibuit coram nobis in Cur' Cancel' nostra quandam Petitionem vel Billam de Queremon' ut quidam Testis versus Te examinarentur in perpetuam Rei Memoriam, & ne tibi in prejudicium cederet tibi precipimus firmiter injungen' quod omnibus aliis prætermisissis, & excusatione quacunque cessant' in propria Personâ tuâ vel per tuum Attornat' aut Deputat' sis coram nobis in Canc' nostra infra quatuordecim Dies immediate post receptionem hujus Brevis. Teste meipso apud W. &c.

And 'tis said, The Complainant may have this Commission on Filing his Bill, even before a *Subpœna*, and so is the Prayer of the Bill; and it seems a *Subpœna* is not necessary: For all that seems requisite thereupon is to give due Notice to the Parties concerned. *Sed vide infra.*

And if the Defendant does not shew Cause against such a Commission, nor will join therein, the Plaintiff may on Motion, &c. have one *ex parte*, and go on alone.

And Note, No Depositions taken in *perpetuam Rei Memoriam*, shall be made use of, or given in Evidence against any other Persons; but such Defendant or Defendants who were warned or summoned to defend the Bill; or some claiming under him or them by some Interest, which accrued after the Bill preferred.

Touching the Examination of Witnesses in *perpetuam Rei Memoriam*, the following Orders were made *tercio Eliz.* by the then Lord Keeper Sir Nicholas Bacon, viz.

1. The Commissioners shall examine no Witnesses, but such as are aged or impotent.

U

2. The

Of Examining Witnesses

2. The Complainant or Party who sued for the Commission, shall give Warning or Notice by Precept from the Commissioners unto the Party, that should take Prejudice by this Examination, by the Space of 14 Days at least of the Time and Place, when and where the said Commissioners will sit upon this Commission.

3. And the same Warning being so given, the Commissioners are to be satisfied by the Oaths of the Party Complainant, or some other credible Person, That Warning is given accordingly, before they shall proceed to the Execution of the Commission.

4. If the Party adversant or Defendant can shew before the Commissioners good Cause of Exception, either against the Witnesses produced by the Complainant, or any of them, or against the Commissioners themselves or otherwise, then they shall cease and forbear any further Execution of the said Commission. And the Commissioners shall certifie and return the said Causes and Exceptions up with the said Commission.

5. But if the Party adversant cannot shew sufficient Cause as aforesaid, then the Commissioners shall proceed to the Examination of Witnesses, and the Party Adversant or Defendant shall have Liberty to join in the Examination of the same Witnesses, or of any other, upon Interrogatories on his Behalf, if he think good.

6. And if the Defendant did not appear, they are likewise to certifie and return whether *Affidavit* were made of the giving of Warning by Precept as aforesaid, or not.

Note.

The foregoing Orders are to be observed where the Commission is ex parte Querentis only, and are to be engrossed in Parchment, and subscribed with the Hand of the Register, and to be annexed to every of the said Commissions, but not otherwise: For if the Defendant join, then these Articles shall not need.

7. That the Commissioners Names be specially assigned by the Lord Keeper or Lord Chancellor *pro Tempore*.

And

And these further Rules were also made by him touching the *Publication*, &c. of such Depositions.

1. The Party who prayeth Publication, shall first by himself or some other make Oath, That the Depositions of the same Witnesses are necessary to be given in Evidence on his Behalf.

Orders touching the Publication of such Depositions, &c.

2. Oath must also be made, That the same Witnesses be either dead, or so aged or impotent as they cannot travel to testify *viva voce*, without Danger of Life.

3. This Oath being so taken, a Master of the Chancery must first open the Commission, and consider whether this Order before-mentioned hath been observed in all Points; wherein he being satisfied, Publication is thereupon to be granted.

4. Provided always, That no Depositions (so taken) shall be given in Evidence, but against the Persons that were by Precept warned (as aforesaid) or against their Heirs or Assigns.

5. And provided also, that after Examination had and taken (as aforesaid) and after Publication had and granted of the same Examination, the Party Adversant or Defendant shall not be admitted to have any new Examination on his Behalf concerning the same Matter.

No new Examination.

6. And it was further ordered, That a joint Commission should be made as all other general Commissions, *ad examinandum Testes super Interrogatoribus administrand'* be; adding at the End of the same these Words, *In perpetuam Rei Memoriam permansur'*. Note, This Form differs something from the President *supra*, p. 289.

Form of the Commission.

But since the said Orders made, the Course has been, That if the Party interested within 14 Days of the Service of the *Subpœna* shew such Cause to the contrary, as is allowed by the Court, then the Plaintiff is to desist; if not, he may go on alone and examine them *ex parte*; or the Defendant may come in by Appearance and join in Commission (if he pleases) and then 14 Days Notice is to be given of executing the Commission.

Cause shewn & contra.

Examination *ex parte*. Appearance and Notice.

Commissioners, how named.

If the Defendant will not join in the Commission, 'tis said, The Plaintiff's Clerk must prefer Six Commissioners Names in Court to the Lord Keeper, whereof 3 or 4 of them or others, which the Court shall appoint, shall be Commissioners to examine. *Sed quare* if the present Practice.

Joynder in Commission on Condition rejected.

Upon a *Subpoena in perpetuam Rei Memoriam*, the Defendant appearing consented to join in Commission, so as the Lord Bacon's Orders touching the Examination of Witnesses in perpetual Memory might be observ'd; But upon Motion it was ordered, That the Commission should be made general, as in like Cases, where the Parties join; for that it seemed to the Court, that the Lord Bacon's Orders were intended to be observ'd only where the Plaintiff hath a Commission alone.

Examinations on Interrogatories; not on Articles.

Note, The Court does not now give Articles to examine upon, but the Parties exhibit what Interrogatories they think necessary; and the Proceedings upon this Bill are mostly the same as in other Cases.

Used on Trials at Law.

These Bills to examine *in perpetuam Rei Memoriam*, were utterly disliked by the Lord Chancellor Egerton, because the Depositions thereupon are not (ordinarily) to be published but upon Oath, That the Witnesses are dead; and being dead there is no Remedy against them, if they have committed Perjury; and he ordered the Party to exhibit his Bill on the Title, and so to proceed to an Examination and Publication in the ordinary Course, saying, *They might go to Law if they would, and take the Benefit of those Examinations.*

Published by Consent, or on Oath, &c

Though the Depositions are not ordinarily to be published whilst the Witnesses live; yet in some Cases, as by Consent of Parties, or upon Oath, That the Plaintiff has some Trial at Law, wherein he shall need them; and that the Witnesses are not able to travel, or for other good Reason, the Court will sometimes order Publication in the Life of the Witness. And then the Commission is to be opened by the Master to be considered of, according to the Lord Bacon's Order; and afterwards the Party may exemplify the Depositions, and they may be given in Evidence in any other Court by Order of this Court.

If a Matter is properly triable at Law, as a Title, &c. and the Plaintiff can have an Opportunity of trying it there, this Bill is not to be brought here till the Party has affirmed his Title at Law; if he does, it will be dismiss'd upon a *Demurrer*. Demurrer for that the Plaintiff has not affirm'd his Title at Law.

A Bill set forth, That one of the Defendants's Ancestors settled the Estate in Question on the Plaintiff in Tail, That the Deed was lost, or in the Defendant's Hands, and prayed, that the Plaintiff might examine Witnesses *in perpetuam Rei Memoriam*.

The Defendant answered the whole Bill (denying the Estate or Deed:) But as to the examining Witnesses *in perpetuam Rei Memoriam*, or proceeding any further therein, the Defendant demurred: For that the Plaintiff might try his pretended Title at Law; and seeing there was no Impediment at Law, but that the Plaintiff might try his Title there, and so affirm it and the Deed, by which he claimed: And because he had not so done, the Demurrer was, upon great Debate, allowed, *Chan. Rep. 263.*

Where Lands are advised by Will, and there is no Occasion or Opportunity to prove and establish it at Law, it is often thought necessary to perpetuate the Testimony thereof in this Court. *Stiles Pract. Regist. 587.* How to perpetuate Testimonies on a Will, and to prove the same in this Court.

The way to do which, is to exhibit a Bill against the Heir at Law, and thereby set forth the Will *in hac Verba*.

The Defendant having answered they must proceed to Issue, as in other Cases, and then examine the Witnesses to the Will, or prove their Hands, if they be dead.

The Will must be brought into the Examiner's Office to be examined unto; which being done, and Publication past, the Cause is at an End.

'Tis said, Though this Court suffers Examination to perpetuate Testimonies of a Will, yet it will not barely try the Validity of a Will; but if the same come collaterally in Question upon a Bill for the Performance of a Trust, or touching a Devise out of Lands, &c. the Court will sometimes direct an Issue at Law to try the Validity thereof. Validity of a Will how tried.

Chancery prohibits the Spiritual Court to prove *Wills*.

An Issue directed, and a perpetual Injunction not to prove a Will touching Goods. Bill to perpetuate, &c. reviv'd, tho' *contra* to two Issues tried at Law.

Examiner.

Though there be Goods and Chattels devised by the same Will, whereby Lands are devised, yet the Proving thereof in the Spiritual Court is of no Avail as to the Lands; and this Court (as a Court of Law) will prohibit them to intermeddle in the Proof thereof any further than concerns the Goods, &c.

An Issue having been by this Court directed to try whether a pretended Will or Testament of Goods only, was a Will or no Will; and it being thereupon found, No Will, this Court granted a perpetual Injunction thereupon to the Defendant not to prove such Will in the Spiritual Court.

The Court suffered a Widow to revive a Bill to perpetuate the Testimony of Witnesses to a Will (saving the Advantages of Exception at the Hearing;) tho' upon a former Bill by her Husband, and two Issues at Law thereupon, the Testator was found *Non Compos Mentis*; and the Finding of the said Issues, &c. was insisted on in the Answer by the way of Bar to the present Bill of Revivor.

The Examiner may proceed to examine Witnesses in perpetual Memory, if the Plaintiff hath served the Defendant with a *Subpœna* to give him Notice to examine likewise.

Of Examinations de bene esse.

Examinations *de bene esse*, to be after Bill filed and before Answer.

After a Bill filed, and before Answer, the Court on *Affidavit*, That any of the Complainant's Witnesses are aged and infirm, sick or going beyond Sea, whereby the Plaintiff thinks he is in Danger of losing their Testimony, will order them to be examined *de bene esse*, i. e. so as to be valid, if the Plaintiff has not an Opportunity of examining them after Answer; as where in the one Case they die before Answer, and in the other do not return after.

In either of which Cases the Depositions taken may be made Use of, either in this Court or at Law, like as those Depositions, which are taken in perpetual Memory, as before is shewn.

Also Depositions taken *de bene esse*, are to be of no Force, if the Parties be alive and well, or do return, &c. after Answer: But in such Case they must be re-examined,

examined, if the Plaintiff expects any Benefit from them.

And though all the Bill be not answered, yet they must be *examined in Chief*, seeing the Defendant's *Traverse puts all in Issue*; so that the Plaintiff may examine to such Points, as are not fully answered.

After the Bill is filed, the Court on *Affidavit*, that any of the Plaintiff's Witnesses are going beyond Sea, will order them to be examined *de bene esse*.

The Examinations of Witnesses after Appearance, and before Answer, is only *de bene esse*; and yet if any of them die before the Defendant has answered, their Depositions shall ordinarily be made use of, either in this Court or at Law, else not.

A Defendant may by Motion of Court be struck out of a Bill before Answer, in order to be examined as a Witness; and so he may after Answer paying Costs for the Dismissal as to him. *2 Chan. Cases* 214.

But if he has answered, and the Plaintiff is in Doubt whether he will be a good Witness or no, or whether he may upon Hearing be found a necessary Party, he may let him stand in the Bill, and have an Order to examine him *de bene esse*.

See an Order to this Purpose *ante pag.* 288. and that the Rules for Examination of Witnesses *de bene esse*, are of like Nature with those for Examining them *in perpetuam Rei Memoriam*.

CHAP. XI.

Of Depositions of Witnesses, and other Proofs and Evidences used in this Court.

THE Manner of proving a Thing or Matter in this Court, is either by the Deposition of Witnesses, or by Deeds and other Writings made Exhibits in the Cause, or by Witnesses examined in Court *viva voce*; a word of each of these.

Depositions of Witnesses are their Answers upon Oath reduced into Writing to such Interrogatories or Questions, Depositions,
how taken.

Of Depositions of Witnesses.

Questions as are likewise put in Writing and exhibited or administered unto them, either by an Examiner in the Office, or by Commissioners in the Countrey, as before is shewn.

To be kept private.

And these Depositions are to be kept private, and no Copy or Abstract of any of them is to be delivered, till Publication is past.

By Commission.

Those taken upon a Commission are Immediately upon bringing in of the Commission to be delivered to the proper Six Clerk or his Deputy, to be so safely kept, and without Opening till Publication be past.

By the Examiners.

And those taken by the Examiners are to be safely and privately kept by them till Publication; and if they be not in both Cases thus kept, and entred as of Record by the proper Officer, they are void, and not to be made use of, either in this Court or at Law. *Ord. Chan. 156. 168.*

Punishment of delivering undue Copies.

By former Orders either Examiner in the Cause may take out *Subpœna's* against such as he shall probably suspect to have delivered undue Copies of the Depositions to the adverse Party, his Clerk or Solicitor, for the Examining such Offenders upon Interrogatories to be allowed of by a Master, and to be executed before the other Examiners; as also against any he conceives to be able to prove the Abuse, in case it be denied.

And if upon Consideration of the Answer to the Interrogatories, it be certified by such Master, that the Parties are faulty in the Matters aforesaid, or in any Thing of like Nature, every Person so offending shall be committed to the *Fleet*, till he has given the Examiner Satisfaction. But if the Parties acquit themselves upon such Examination, and the Examiner is not able to prove the same, he shall pay such Costs, as the Court shall think fit, for the unjust Vexation. *Ord. Chan. 76. 4.*

Office-Copies only to be read.

And by an Order 19 *Januarii* 1694. No Copies of Depositions are to be read or made use of in Court, or before a Master, but what are taken out of the proper Office, and *signed* for the Party, for whom the same shall be read.

But, *Note*, sometimes, If one of the Parties has not brought his Copy into Court at the Hearing, &c the other

other Party will lend him his Copy, and the Court will allow it to be read.

The Examiners and their Deputies have Liberty to attend in Court to inspect all Books of Depositions, which are read either for the Plaintiff or Defendant, and to see whether they be duly *signed* for the Party, that produces the same. And in case the Examiner shall discover any Fraud or ill Practice, the Cause shall be put off, and the Parties offending shall stand committed to the *Fleet*, till the Officer injured be agreed with and paid his Fees, and till 5*l.* be paid to such Person, as the Lord Chancellor or Keeper shall appoint for the Use of the Poor; and till the Client injured by putting off the Cause be re-imburfed his Charges in respect thereof, and till the further Order of the Court. *Ord. Chan. 76. 4.*

Examiners to inspect the Books.

Fraud, &c. punished.

Depositions are not to be suppress'd upon a bare Petition only, without a Reference to a Master, and a Certificate upon it, nor upon Motion without a Reference, except Male Practice, or some great Irregularity plainly appears to the Court.

Depositions suppressed.

No Motion shall be made in Court, nor Petition preferred for suppressing of Depositions irregularly taken, until two of the Six Clerks (not towards the Cause) have been first attended with the Complaint of the Party grieved, and shall certifie the true State of the Fact to the Court, and at the Foot thereof their Opinion therein; (if the Attornies or Clerks shall not, for Ease of their Clients, agree before them; For which Purpose a Rule for attending the said Six Clerks shall be entred of Course with the Register, at the Desire of the Party complaining, which shall warrant their Proceedings and Certificate to the Court. *Ord. Ch. 134.*

Rule therein.

A Plaintiff at Common Law having caused Witnesses to be examined in this Court, where there was no Suit depending, their Depositions were ordered to be suppress'd, and never to be given in Evidence against the Defendant, or any claiming from, by, or under him. *Pr. H. Co. Ch. 157.*

Causes of suppressing them.

Where three Witnesses examined by Commission, did, upon Hearing of the Matter in open Court, depose, That the Commissioners had set down their Depositions

Mistaken.

positions otherwise, than they did depose, the Court ordered those Depositions should be suppressed, and the said Witnesses examined again. *Cary's Rep. 66.*

Contradictory.

Where a Witness's Depositions on one Side contradict his Depositions on the other Side, 'tis the Course to order him to attend the Court that he may explain himself, and set the Matter right if he can, or otherwise his Depositions on both Sides will be suppress'd. *Vide pag. 299, 300.*

Depositions in cross Causes.

'Tis generally said, That the Reading of Depositions taken in a cross Cause, must be by a precedent Order, on a Motion made to that Purpose.

But where there are several Causes that are merely cross Causes, between the same Parties touching the same Matters, there the Depositions taken in one Cause, may be used at the Hearing of the other Cause without any Motion.

And where either Party obtains an Order to use Depositions taken in another Cause, the adverse Party may likewise use the same Depositions without Motion; unless upon special Reasons shewn to the Court by the Party desiring it, he be restrained by Order so to do.

Note, No Cross Bill is to be admitted after Publication.

Depositions and Witnesses *ad informandum Conscientiam Judicis.*

Depositions of Witnesses examined only to inform the Conscience of the Chancellor, are to be delivered to him sealed, that he alone may pursue the same; nor are they ever published but by Consent, or by some special Order.

Upon *Affidavit* made by the Plaintiff, that since Publication he had divers Witnesses (naming them particularly) come to his Knowledge, which he knew not of before, the Court ordered, That he might examine them before the Examiner, *Ad informandum Conscientiam Judicis.*

Also, the Court at the Hearing, when they are in Doubt, doth sometimes order Witnesses to be examined *ad informandum Conscientiam Judicis.*

Depositions exemplified.

The Masters are not to pass any Exemplifications of Depositions on a bare Sight of the Copies only, without first calling the Officer or Officers, who have the Custody of the Records, or the Originals of such Copies,

pies, or some sworn Clerk of his or their Office, who is to produce the same before them to warrant the Signing thereof. *Ord. Chan. 144.*

An old Exemplification of Depositions in *Chancery* has been admitted to be given in Evidence, though the Bill and Answer were not inserted in it: For about forty or fifty Years since, it was not usual to insert the Bill and Answer therein.

'Tis said, though a Cause be dismiss'd upon the Hearing, yet may the Parties have the Depositions exemplified under the Great Seal, for the Furtherance and Maintenance of their Rights and Titles at the Common Law. *West. Sec. 45.*

And see 1 *Chan. Cas. 147.* where 'tis said Depositions or Proofs cannot be exemplified without Bill and Answer; and hence if a Bill be dismiss'd for Irregularity or Impropriety, as that it is by way of Revivor, when it should be an original Bill, so that there never was any such Cause in Court, the Depositions cannot be exemplified, seeing the Bill cannot.

But if the Bill was dismiss'd only because the Matter of it was not proper for Equity to decree, there the Depositions may be exemplified.

An Exemplification of a Deed has been ordered to be pleaded at Law, where the Deed it self could not be brought in. *Torbill 89, 90.*

In some Cases, Copies of Depositions and Pleadings signed by the Six Clerk, have been ordered to be recorded and used as authentick, and in other Cases the Court has denied it. *Vide 1 Chan. Rep. 15, 36.*

Copies of Depositions, &c. recorded.

The Copies of all Depositions of good Witnesses regularly taken in the Cause after Answer, and duly kept, published and signed, may ordinarily be read as Evidence at the Hearing.

Depositions allowed as Evidence:

But if it appears a Witness has deposed falsely in Part, as where his Depositions contain manifest Contrarieties in any material Point, his Depositions are wholly to be rejected, and the Party be compelled to produce better Witnesses.

Or rejected.

'Tis admitted, If a Witness be a Surety here in Court, or otherwise disabled to be a Witness; yet if both Parties examine him, neither can afterwards object against Reading him.

Witness disabled, yet allowed.

Of Depositions of Witnesses.

Witness refusing.

If a Witness refuse to be cross-examined, it is a good Cause of Exception to his Depositions.

A Witness twice examined in chief to the same Party, in the same Cause, without special Order, is not to be allow'd or read at the Hearing.

Depositions of a sick Person, or one beyond Sea, may be read by an Order for it.

None can make use of Depositions in a Cause wherein he was not a Party, nor can they be read against him.

In perpet' Rei.

The Depositions of a Witness taken before Answer, to preserve his Testimony, who dies after Answer, shall not be given in Evidence, though he continued sick all along, because they were not duly published.

De bene esse.

Witnesses examined *de bene esse* upon a Contempt, can't be read.

'Tis said, where a Bill cannot be read at Law, the Depositions in the Cause cannot be read either there, or in this Court; and therefore if a Bill be dismiss'd for Irregularity, &c. *ut supra*, so that in Truth there never was regularly any such Cause in Court, and consequently no Proofs, the Depositions in the Cause cannot be used: For the Bill could not be exemplified, nor used at Law. 1 Chan. Cas. 175.

But if a Cause be dismiss'd, for that the Matter thereof is not proper to be decreed, yet the Testimony of a Fact proved in such a Cause, may be used as Evidence as to that Fact, between the same Parties, whenever it shall come in Question again. *Ibid.*

Depositions
in perpetuum
Rei Memor'

Depositions in a Cause to perpetuate Testimony, shall not be made use of, nor given in Evidence against any other, than the same Defendants, who were subpoena'd to defend it, or some claiming by or under them an Interest, which accrued after the Bill preferred.

De bene esse.

The Examinations of Witnesses after Appearance and before Answer, is only *de bene esse*; and yet if any of them die before the Defendant has answered, their Depositions shall ordinarily be made use of, either here or at Law, else not. *Vide ante.*

On a Certiorari Bill.

The Proofs made before Answer upon a *Certiorari* Bill, are not to be made use of at the Hearing; for they are only to give the Court Jurisdiction, and the Defendant

Defendant could not then examine any Thing on his Part.

Depositions in a former Cause between the same Parties, may be used by special Order, and the adverse Party may then also read them. 1 *Chan. Caf.* 175. Depositions between the same Parties.

Depositions in an *ancient* Cause between other Parties, are sometimes allowed to be read even against one that claims not under any of those Parties. 1 *Chan. Caf.* 73. Other Parties.

A Defendant not being a principal one, and examined for the Plaintiff in another Suit between other Persons, was admitted to be read as a Witness.

But note, Depositions in a Cause between other Parties, though touching the same Matters, are not to be read unless by special Order: Nor Depositions in other Courts without such Order; nor then neither any of those Depositions, that were taken after Publication past here. In other Courts.

See *Torbill* 192. Depositions in the Admiralty have been read at the Hearing. The Admiralty.

Where either Plaintiff or Defendant obtains an Order to use Depositions in another Cause, the adverse Party may likewise use the same without Motion, unless he be on special Reasons shewed to the Court inhibited by the same Order so to to. *Ord. Chan.* 134. In other Causes, *vide supra.*

'Tis said, The Depositions of new Witnesses upon a Bill of Revivor after Publication, may not be read in this Court: But an Issue having been directed, and the Witnesses aged and infirm, the Court may according to the Prayer of the Bill of Revivor, give Leave that they be examined, and that their Depositions may be used at the Trial (in case such Witnesses die, 1 *Chan. Caf.* 80. On Bill of Revivor.

Depositions of one beyond Sea, if within the King's Dominions, are not to be used, but they may, if he be yond Sea. Of one beyond Sea.

In 1 *Chan. Caf.* 65. 'tis held, That a Bill in a former Case in the Name of the now Defendant, was not to be read as Evidence against him, unless it were proved to have been exhibited by his Direction or Privity. Bill in a former Cause.

Bill and Answer.

Though a *Subpoena* to rejoyne be sued out, yet if it be not served, no Proofs are to be made use of at the Hearing, but the Cause must be heard on Bill and Answer. *Vide ante*, Of Hearings on Bill and Answer.

Bills, Answers, &c. allow'd as Evidence:

'Tis said, If it appear to the Court, that there has been a Bill and Answer, though they be gone off the File, yet the Court will allow Depositions taken in that Cause to be used in another.

Where the Defendant by his Answer denies an Agreement alledged in an original Bill, one Witness will not be sufficient to prove it, for that it is but Oath against Oath. 1 *Chan. Cas.* 8.

Trust denied and confessed.

So, if a Husband, and his Wife Executrix, answer severally, he denies a Trust, she confesses it, one Witness is not enough to prove it: And, 'tis said, a Man and his Wife being but one Witness, where their Evidence is contradictory, it ought to be suppress'd. *Quare.*

Answer, and one Witness.

If a Defendant in his Answer do affirm a Thing, which he seconds by the Testimony of a single Witness, and nothing is proved against it; this is sufficient to decree for the Defendant, or to dismiss the Bill.

Binds none but the Party.

If one Defendant by his Answer confesses sufficient Matter for the Plaintiff, it shall bind himself; but it is not ordinarily sufficient Evidence to conclude, or bind his Fellow-Defendant; and any Stranger to the Suit may give the Defendant's Answer in Evidence against himself; so a Plaintiff's Bill may be read as Evidence against himself.

Note, it was the Opinion of the Justices in *B. R.* in *Mich. Term* 21 *Jac.* 1. That the Defendant's Answer in a Court of Equity to an *English* Bill, is good Evidence to be given to a Jury against the Defendant himself; but it is no Evidence to be given against other Parties.

Defendant an Evidence.

And they also held, That if an Action be brought against two Persons, and the Plaintiff at the Assizes proceedeth against one of them only; In that case, he, against whom the Plaintiff did surcease his Suit, may be allow'd as a Witness to give Evidence in the same Cause.

And

And they likewise agreed, That if the Party cannot find his Witness to give Testimony *viva voce*, then he is as it were dead unto him, and his Depositions in a Court of Equity between the said Parties, Plaintiff and Defendant, may be allow'd to be read to the Jury, so as the Party does make Oath, That he did his Endeavour to find his Witness, but could not. *Godbold's Rep.* 327. Depositions.

One exhibited his Bill here, to discover Evidences, and made Title in his Bill to Lands, which the Evidences did concern: The Defendant also entitled himself to the same Lands, and so justified the Detaining of the Evidences for the Maintaining of his own Title to the said Lands.

Whereupon, after Examination of Witnesses on both Sides, the Matter came to Hearing; and for Doubtfulness in the Testimony of several of the Witnesses, the Court ordered the Plaintiff to bring an Action of Trespass, &c. against the Defendant: To which the Defendant should plead to the Freehold, and thereupon Issue should be joined, and tried at the Bar of B. R. and the Jury should be named by the Justices of Assize where the Lands lie; and he that had the Verdict; should have his Possession established in Chancery till the other could make a better Title. Doubtful Evidence.

In *Hillary Term*, 22 *Jac.* 1. a Commission was awarded out of this Court, returnable in *Easter Term* following: The Commissioners began the Examination of the Witnesses on *Monday* the 28th of *March* 1625. which was the Day after the Demise of King *James*, and continued in Examination of divers Witnesses till *Friday* following: At which Day, and not before, having Notice of the King's Demise, they surceased. And whether this Examination of Witnesses and their Depositions, should be suppress'd, was the Question. Depositions taken after the King's Demise.

And by the Opinion of the Justices, the Depositions should stand; for though legally the Commission was determin'd by the Death of the King, yet the Commissioners having no Notice thereof, and having examined Witnesses thereupon, they held that such Witnesses were duly sworn and examined, and that therefore

fore their Depositions should be allowed, especially in a Court of Equity, where the Proceedings are *de Jure Naturali*, and not according to the strict Rules of Common Law.

And the Justices approv'd of the Course, that was used to preserve the Testimony of those, that were examined; which was, that the Witnesses should be called, and their former Examinations, and the Interrogatories read and tendred to such of them as were alive; and whether they approv'd of them or not, to examine them *de novo*.

Stat. 5 Eliz.
of Perjury.

It was then propounded to the Justices, If any Witnesses examined upon such a Commission should be perjured, whether they might be punished by the Stat. 5 Eliz. for that Perjury? and resolved by them all, That they may not; for being examined before Notice of the King's Demise, what they did was legal; *Cro. Car.* 69, 70. *Sir Randal Crew*, and *Sir Geo. Vernon's Case*.

J. S. being Complainant against *B.* in this Court, it appeared upon Bill and Answer, That by an Order there he made one *L.* to be a Party to the Bill against *B.* and a Commission issued out between *L.* and *B.* upon which Commission the Defendant was examined on Part of the said *L.* and deposed directly for the said *L.* upon which a Decree was had in that Court against *B.* and for this Matter *B.* brought an Action of Debt against the Defendant on 5 Eliz. of Perjury, as a Party grieved by the Deposition of the Defendant.

It was the Opinion of the Justices, That the Action did not lie, because in this Case *L.* was not a Party to the Suit, but came in collaterally by Order; and there being no Bill depending either against him, or brought by him, he was not within the Statute: For as a Penal Law, it ought to be taken strictly. *Yelv.* 22. *Brode and Owen's Case*.

Of Proofs by
Deeds and
Writings.

If Deeds are brought into Court, or confess'd by the Answer, the Court upon Motion of Course will order such of them as the Party needs, to be delivered out to the Solicitor, or produced before the Examiner or Commissioners, that they may be proved; and that after that is done, they may be returned.

Where Writings brought into Court, (*viz.* into the Hands of a Master by Order of Court) were ordered to

to be delivered out to be used at Law, they were ordered to be delivered upon a Schedule to the Party, who brought them in, and he was to produce them, and all others confessed by the Answer, or produced before the Master (if necessary) at the Trial, &c. at Law, and to return those delivered out here, after Trial, &c.

Where a Deed in the Plaintiff's Hands, mentioned in the Plaintiff's Bill, was necessary to the Defendant's making his Defence a full Answer; The Court ordered the Plaintiff should give him a Copy of it.

Deed in the Plaintiff's Hands, Defendant, ordered a Copy. Bills of Discovery, &c. of Deeds.

In an Answer to a Bill for Discovery of Deeds, the Defendant confesses the Deeds, but does not set them forth, because he would (he says) save the Defendant the Charge, and says he shall have Copies of them when he pleases: The Court upon Motion ordered the Defendant to give the Plaintiff Copies of the Deeds without sending them to a Master.

In a Bill for Discovery of, and to be relieved, and to recover Deeds or Writings, and to be helped and relieved by Decree on the Matter of such Deeds, there must be Affidavit made by the Complainant, that he, or his Ancestors had such Writings in his, or their Possession, that they were casually lost, and that he knows not where they are, unless they are come to the Defendant's Hands, or to this Purpose, else the Defendant may demur. 1 Chan. Cas. 11.

Affidavit of Deeds lost.

But if the Bill is only to be relieved against a Deed in another's Hands, or that the Bill seeks no Decree, but barely prays, That the Defendant may discover whether he hath such Deeds or no, or to have the Deeds produced at a Trial, there needs no Oath of the Plaintiff. *Ibid.*

Upon a Bill to foreclose, the mortgaged Lands were decreed to be sold, a Purchaser being reported: The Defendant moves that the Mortgagee might bring his Deeds to, and leave them with a Counsel, who was to draw the Conveyance: The Court would not order him to part with the Deeds, but ordered they should be brought before a Master, where the Counsel might inspect them.

Bill to foreclose.

A Defendant ordered to be examined to an Account on Interrogatories, is explained in short.

Defendant examined, The &c.

Papers, &c

The Plaintiff moved, That the Defendant may upon Oath bring before a Master all Papers relating to the Cause, which the Court refused to order: For (said they) *at this Rate Causes would never have an End.* But they ordered all *Writings* and *Exhibits* proved by the Depositions to be brought in.

Writings, &c
made Exhibits.

Nor would the Court suffer the Interrogatories to be amended, &c. but said, If at last they found themselves pinch'd, they might move the Court again.

Shop Books,
&c.

Shop-Books have sometimes been allowed to be read as Evidence at the Hearing, and sometimes rejected. *Torbil 91 Cary's Rep. 45.*

Also Depositions in the Admiralty have been read here at the Hearing. 42.

No Letters
or Notes not
Exhibits.

No Letters or Notes not made *Exhibits* in the Cause, (*i. e.* proved by the Depositions, and produced to the Court) are to be made use of at the Hearing; but for Deeds and Copies of Records, an Order may be had upon Motion, to prove them *viva voce* in Court.

But all Letters, Notes, Deeds, Copies of Records, and other Writings, made *Exhibits* in the Cause, may be read at the Hearing: And though they stand proved in the Depositions, yet they must be shewed forth in Court, if the Party will have any Benefit of them as Evidence.

Deeds, &c.
prov'd *viva*
voce.

But though no Letters or Notes, not made Exhibits, yet all Deeds and Copies of Record (though not Exhibits) may by special Order of Court had upon Notice and Motion, be proved *viva voce* at the Hearing.

The Execution only.

And so they may at the Re-hearing, but nothing besides the Executing of them; and in either Case they must be particularly mentioned in the Order, and no Witnesses *viva voce* are allowed at the Hearing, except by special Order.

Oath of seeing a Deed
no Evidence
thereof.

The Oath of having seen such a Deed, is no Evidence, nor to be allowed as a Proof thereof; for it might be forged; but the Oath should be, That he saw it sealed and delivered. *Cary Rep. 43.*

School-
Masters Li-
cence.

A Licence to a Schoolmaster to teach, granted by the Bishop's Chancellor under Seal, during the Bishop's Suspension, hath been allowed to be read as Evidence.

A

A Certificate of a Party's Character under several Persons Hands, which were proved to be so by a Deposition, was not allowed to be read as Evidence, because the Certifiers might have been examined to the Party's Reputation. Certificates of a Party's Character refused.

A Copy of a Retainer of a Chaplain by a Nobleman entred in the Court of Faculties, not allowed to be given in Evidence, but one, that had seen it under Hand and Seal, was allowed a good Witness, because a Stranger to the Plaintiff. No Copy of a Retainer.

Though no one can make use of Depositions in a Cause, wherein he was not a Party, nor can they be read against him, yet in an Ejectment brought by a Reversioner or in Debt, upon the Statute of *Ed. VI.* brought by a Proprietor of Tythes, after a Verdict at Law for the Lessee or present Possessor, the Reversioner of the Land or Tythes shall have Advantage of the Verdict, and give it in Evidence, because they could not be immediate Parties to the Action or Suit; for at Law that must be prosecuted by the Lessee or present Tenant, but in Chancery they might have been made Parties.

Ancient Court-Rolls are often given in Evidence, if made up, and that without Proving; also Copies of Court-Rolls, and even Minutes or Notes for making up Court-Rolls not made up, may be read, if they are proved. Court-Rolls, Copies and Minutes.

A Copy of Copyhold Lands may be given in Evidence, whether the Rolls are or are not lost; but no Copy of a Copy can be admitted, nor Copies themselves generally, except Copies of Court-Rolls.

Accompts stated under Hand, though not Seal, may if proved, be read as Evidence; so a Receipt of the last half Year is Evidence that all before is paid. Accounts stated.

A Man's Book of Accompts is Evidence against him, not for him; whatever a Man writes or does himself, will not be Evidence for him, and therefore his own Oath formerly taken will not.

The Proof of a Surmise in a Prohibition shall not be given in Evidence in any other Cause, because the Defendant there could not cross-examine.

Parish-Books or Church-Books are no Evidence. A Parish-Books, Copy of a Lease out of a Ledger-Book of Dean and Chapters

Chapters Lands not allowed, because the Book it self is but a Copy, and no Copy of a Copy can be good Evidence.

Warrants.

Warrants for Assessments by the Justices are often proved by the Justices Hand.

Officers.

An *Office found post Mortem* may be given in Evidence.

Verdicts.

So a *Verdict* against one, under whom either the Plaintiff or Defendant claims, may be given in Evidence against the Party so claiming, but not if neither claim under it; yet a *Decree in Chancery* is no Evidence at Common Law.

Decrees.

Letters.

Letters may be given in Evidence (if the Hand be proved) but not by the Writer himself. So may *Bills for Goods sold*, and *Trades mens Books*, &c. and almost any Thing in Writing (except Copies) may be given in Evidence against the Party, proving the Hand, &c.

Bills, &c.

Confession.

When a *Confession* is offered in Evidence, it shall be taken altogether as where 'tis prov'd a Defendant own'd the Debt, but said he paid it; it shall be good for the Payment as well as the Owing.

Possession.

Possession is a great Evidence of a Right, so that he that hath the Possession may distrain the Cattle of him, that has the Title: For the Taking is in Respect of the Possession more than of the Title.

Alteration of Exhibits after Commission.

Note, Certain *Exhibits* of Writings were given in at a Commission for Examination of Witnesses. The Defendant suggested, That the *Exhibits* were altered and interlined since the Commission executed, and prayed a Commission to examine that Point. It was objected, That when a Party hath a Commissioner present, he can never examine new Interrogatories. Allowed he could not as to the Merits, but that this had happened since, and not examined to by the Commissioner not being then in Being: Answered, How could the Defendant know this but by Discovery of his Commissioner, who ought not to discover the Examination; but yet the Lord Chancellor ordered a Commission. 27 & 28 Car. 2. inter *Richardson* and *Louther*, 1 Chan. Caf. 273.

How Commissioners may adjourn to another Time and Place.

Where a Commission was granted to examine the Quantity and Value of Oar, the Six Clerks appointed

Time

Time and Place; but the Defendants were so aged that they could not come to the Place, and therefore a new Commission prayed. Lord Chancellor said, The Time and Place is only for the first Meeting of the Commissioners, but after they may adjourn to another Time and another Place. *Trin. 28. Car. 2. inter Brown and Vermuden, 1 Chan. Cas. 282.*

In the Case in this Court between the Lord *Aubigny* Complainant, and the Lord *Clifton* Defendant, concerning a Promise supposed to be made by him of Assurance of Lands upon the Marriage of his Lady. The King, by his Letters under his Sign Manual, certify'd to the Lord Chancellor the Manner and Substance of the Promise, as it was made to his Majesty; in Regard whereof his Majesty gave to the Lord *A.* 18000*l.* in Lieu of 1000*l. per Annum*, which he had promised. Which Certificate was allowed at the Hearing of the Cause for a sufficient Testimony and Proof of the Matter it contained. *Hob. Rep. 213.*

The King's Certificate.

So likewise in *Trinity-Term*, 10 *Jac. 1.* in a Cause between Sir *Henry Lea* Plaintiff, and Sir *Henry Lea* Defendant, concerning a Title to certain Lands, of which *Henry Lea* brought his Bill in Equity in the Court of Requests; and the King being informed thereof, Sir *Henry Lea* promised, That if the Plaintiff would not molest him for any of the said Land, that he would give him 200*l. per Annum*: And being sued for Non-Performance of his Promise, the King certified the Promise into the Court under his Seal, and it was holden a sufficient Proof and Testimony of the said Promise; whereupon a Decree was made for the Performance thereof. *Godbolt. 199.*

Simile.

If a Cause depending by Bill in this Court, descends to Issue, &c. and the Plaintiff would have the Defendant sworn and examined on Interrogatories, as a Witness in that Cause, if the Defendant will do so, the Court will compel the Plaintiff to stand to the Defendant's Depositions as conclusive and binding to the Plaintiff; or otherwise the Defendant ought not to be examined, except some new Act be done by the Defendant in *pursue Temps*, and after the Issue joined, as a Feoffment made, and an Estate executed, or a Release by Covin, long after the Matter was pleaded on both

Defendant examined on Interrogatories, his Depositions binds the Plaintiff.

Sides: For in such Cases the Plaintiff may compel the Defendant to be examined.

Note.

Proofs or Evidences of Matters not in Issue, which go to the very Right of the Thing, may be offered at the Hearing; and though the Court will not decree on a Matter not in Issue, which the other had not an Opportunity of examining to, yet it will not decree against what it sees to be mere Right, but will sometimes order that Matter to be tried by an Issue at Law, &c. and found their Decree thereupon.

Issue directed, &c.

Of Proofs by Witnesses.

Hitherto of Proofs by *Depositions*, *Deeds* and *Exhibits*: the other Kind of Proofs is by *Witnesses*: And first, it is to be observed, That all Persons, which are good Witnesses at Law, are good Witnesses to testify in this Court. And *contra*, such Persons as the Law rejects from being Witnesses, this Court generally doth also reject, viz.

1. Men branded with Infamy, that can't be Jurors, as one outlawed; or become infamous, as Recreants, Persons attainted of Felony, false Verdict, Conspiracy, Perjury, *Premunire*, Forgery upon the Stat. 5 Eliz. c. 14. but not upon the Stat. 1 H. 5.

2. But not such as have had Judgment to lose their Ears, stood in the Pillory, or have been stigmatiz'd or branded, nor Infidels. So a Conviction of Barretry hinders not, and one burnt in the Hand may be a Witness.

3. The Wife cannot be a Witness for or against her Husband in a civil Cause, but in an Indictment she may; so she may have the Peace against her Husband, so she may be a Witness in an Indictment, though it concerns her self, as in the Lord *Audley's* Case. So in an Indictment for seducing her, and keeping her some Time in Adultery; or she may be a Witness to prove a Cheat upon her self and her Husband.

The King can't be a Witness by his Letters under the Signet at Common Law; but this has been otherwise ruled in Chancery. *Vide supra* 309.

5. One attainted of Piracy can't be a Witness to prove another guilty; so if he accus'd another before he was attainted, and afterwards confess he wrong'd him, that Confession shall be void after his Attainder.

6. In

6. In an Information upon the Statute of Usury, the Party to the usurious Contract can't be a Witness, because he is to be a Gainer by it: But 'tis said, After he has paid the Money he may.

7. But Kinsmen never so near, Tenants, Masters, Servants, Counsellors and Attornies may be Witnesses. A Counsellor may be a Witness to the Agreement, but not to the Validity of an Assurance, nor to the Counsel he gave.

A Counsellor or Attorney can't be obliged to be a Witness against his Client for Matters subsequent to his being employ'd.

8. A Party rob'd is allowed to be a Witness against an Hundred, for he is (not) obliged to tell what he carried with him.

9. An Executor was produced to prove a Will, which he excepted to, because of his Executorship; it was answered, he had fully administred: He answered, Assets might come afterwards: But the Court would not presume it to bar his Testimony, and therefore he was sworn.

10. *Common per Cause de Vicinage or Shack*, no Bar to ones being a Witness.

11. If the Obligee devises the Debt to the Obligor, and the Executors deliver up the Bond, the Obligee may be a Witness to prove the Validity of the Will, but not a Mortgagee; for by delivering up of a Bond the Debt is cancelled, but not so of a Mortgage.

12. Ch. Baron *Atkins* allowed one of the Corporation to be a Witness, where a Moiety of the Penalty was given to the Corporation.

13. So where an Estate was limited to one for Life, Remainder to the Poor of the Parish of *Greenwich*, the Inhabitants were allowed to be Witnesses to prove the Will.

14. So for a Fine set on a Common-Council-Man, the Town-Clerk was allowed to be a Witness for Necessity.

But a Freeman of *Lynn* was not allowed to be a Witness to prove the Custom of Foreign bought, and Foreign sold.

15. And regularly all Persons, that have any Interest whatsoever in the Thing in Question, are not al-

Of Proof by Witnesses.

lowed to be Witnesses: And the general Questionis, Are you to get or lose by this Cause, which way soever it goes. So as to Witnesses touching *Lands, &c.*

1. If any one has a Remainder in the Lands in Question, or a Lease for Years under one Party, or if he has Common, Turbary, &c. in the Land. Or,

2. If he has sold it, and is bound by Covenants to make it good. Or,

3. If any one has contributed to the Suit. And,

4. In *Issues*, whether within the Parish or not? all the Parishioners are excluded that pay Scot and Lot, because 'tis to enlarge their Parish. So,

5. Those that intercommon, that is, the Inhabitants of either can't be Witnesses, touching the Common, or for any Privileges belonging to the Parish.

6. Neither the Trustee, nor the *Cestuy que Trust* can be a Witness, though some say a Trustee may against his Trust.

7. Nor any one, that has an equitable Interest; as to redeem, &c.

8. A Juror may be a Witness, but must be sworn, and give his Evidence in open Court; for Judge and Counsel must hear the Evidence as well as Jury.

9. A Pardon does make Felons, &c. good Witnesses.

10. If nothing be proved against those in the *Simul cum*, they are good Witnesses, or if not arrested, or Process entred in any other Action against two.

11. Neither he that pays or takes Collection can be a Witness in some Concerns.

A Witness may be good for one Purpose, though not for another; one that has a collateral legal Title to the Land, can't be a good Witness; but a collateral equitable Title may.

Indictment of Perjury don't disable a Witness, only Conviction.

The Probate proves an Executor or Administrator; and that this is no Will, nothing can be given in Evidence to the contrary.

Joint Obligor may be a Witness for Obligee Plaintiff.

If any one is prov'd seised, 'tis presum'd in Fee-simple till the contrary is shewn.

On

On *non est factum Adm*? Plaintiff need not produce Letters of Administration, for they are confess'd : and well enough, though dated after Action brought.
Q. In what Actions or Issues are they to produce them, in what not?

Upon a collateral Issue common Reputation proves a Justice or Baronet without producing their Commissions or Letters Patents.

If a Witness be beyond Sea or Dead, you may prove his Hand.

Guardian in Socage shall be admitted to be a Witness for the Infant, for he is accountable.

A poor House-keeper can't be a Witness for the Hundred in a Robbery, (but the Owner of Land in another County may, for both he and his Tenant shan't pay) though he pays no Taxes, for he may be worth something, when the Money is lay'd by the Rate.

One Copartner can't be a Witness for another in Ejectment, because they claim by the same Title, though no Party, but the Heir may ; for though she is Heir to her Mother, she may give to whom she will.

Devisee or Legatee, if he have received or released, may be a Witness, though after Action brought.

1. Witnesses can't prove any Thing, that ought to be produced in Writing, as Deeds, Records, Writs, &c.

They are not allowed to give in Evidence a Hearsay, tho' the Man be dead ; but the Hearsay of an Act at present Time he may, to corroborate what he says.

2. They can't swear any Parol discourse of a third Person, because if the Party himself said it only, it wou'd not be Evidence ; but they may prove any Thing spoke by Plaintiff or Defendant ; but 'tis said, one may give in Evidence an Hearsay of an Act at the present Time, to corroborate and confirm what the other says.

3. About any Custom or Boundary, they may say what they heard any old Men, that are dead, say, but not any old Men, that had any Interest, as the Parishioner that wou'd enlarge, &c.

4. Matter in Law ought not to be given in Evidence to the Jury.

If Possession has been accordingly, the Court presumes Things done well at first ; as where a Lease

What things may be proved by Witnesses.

to

to the Release, is lost, to shew the Deed, to make a Tenant to the *Præcipe*; they wont oblige you to shew how Lands came to the Crown, or an Abby, or how a Presentation became an Appropriation, for they imagine them lost.

A Creditor, after four Months that a Dividend is made, shall be a good Witness, for no other Dividend shall be intended.

Q. One that pays no Taxes ought not to be a Witness to prove the Bounds of the Parish, for he is subject to watch and ward, which is something.

A Recusant Convict can't be a Witness, for he is a Person excommunicated.

In Informations, where the Party shall receive any Benefit by the Verdict, they shan't be Witnesses for the King; as the Executors or Legatee to prove a Deed forg'd that respects a Will.

But in Deceit for Forging a Will, a Legatee was allowed as a Witness for the Forgery, for this makes nothing to the Probate of the Will, or Recovery of the Legacy; in the Spiritual Court they don't take Notice of it.

If *A* indict *B.* on the Statute of 5 *Eliz.* for Perjury, 'tis said, the Prosecutor can't be Witness.

Outlawry in a personal Action don't hinder any one from being a Witness.

One wanting Understanding or Discretion can't be a Witness.

If a Witness be Bail, the Court on Motion will give Leave to alter the Bail.

Guardian in Socage is a good Witness for the Infant, for he is accountable.

A Felon convict, when pardoned, is a good Witness, for the Pardon takes away *Penam & Reatum.* And Burning in the Hand is in nature of a Pardon.

A Felon attaint cannot be a Juror, nor a Witness.

A Recusant convict can't be a Witness, for he is excommunicated.

In an Information for Forging a Deed to set aside a Will, a Legatee or any other Person, that has any Interest in the Will, can't be a Witness.

Evidence shall never be pleaded, but the Matter of Fact shall be pleaded; and if it be deny'd the Evidence

dence shall be given to the Jury, and not to the Court.

What Things may be given in Evidence.

1. Things done before the Memory of Man, or done in another County, or in another Kingdom; as Assets in another Country.

2. Upon the Issue, *Payment at the Day*, Payment before or after is no Evidence; but upon *Nil debet* 'tis good Evidence, because it proves the Point in Issue.

3. Upon the Issue, *Assets or not Assets, seisd or not seisd*, if one give a Feoffment in Evidence, the other may prove *Covin*; but not if the Issue be *inseoffed* or *not inseoffed*.

4. To make voluntary Conveyances fraudulent the Fraud must be found by the Jury.

5. The *Doomsday Book* brought into Court is good Evidence to prove the Lands ancient Demesne. *Q.* If a Copy thereof proved be not.

6. Recoveries of Copyhold Lands are good Evidence that the Custom of the Mannor warrants an Intail; but Remainders enjoy'd after Estates Tail, shews it better.

7. In Actions upon the Case, Trespass, Battery or false Imprisonment against any Justice of Peace, Mayor or Bailiff of any Town Corporate, Headborough, Portreve, Constable, Tythingman, Collector of Subsidy or *Fifteenth*, for any Thing done in their Office, and all others that assisted them, or acted by their Command may plead the General Issue, and give the Special Matter in Evidence, and such Officers recover treble Costs.

8. If any Thing be allow'd in Evidence which ought not, as a Church-Book, &c. the Court above can't quash it, unless it be certify'd and return'd with the *Postea*; but they may grant a new Trial as for excessive Damages.

9. The Court will not permit the Jury to make out any Writings, but what are prov'd and under Seal.

10. In an Action upon the Case *per quod Servitium amisit*, the Plaintiff must prove the Defendant had Conusance he was his Servant.

Of Examining Witnesses

11. If a Witness be over Sea or dead, his Hand may be proved by Witnesses or Comparison.

12. After Judgment the Court would not set aside a Verdict, though a Witness was found perjur'd; but before Judgment, if an Indictment had been preferr'd they would have stop'd it.

13. If one forswear himself, and afterwards the Action is annull'd by Writ of Error, can the Witness be indicted, *Quere.*

14. In Action of Slander, by which she lost her Marriage; Marriage not traversable, but ought to be proved in Evidence.

15. On *Nil debet* for Rent Entry and Suspension may be given in Evidence. So,

16. On *Nil debet* in an Escape fresh Suit may.

Relative Grants of *tot, talia, &c.* as any Abby, not frequently allow'd without the Substantive Grant too.

17. Custom of Foreign Attachment may be pleaded or given in Evidence.

18. In Trespass with a *Continuando*, there ought to be a Re-entry of the Matter, and for not Proving that shall recover only for the first Entry.

Upon a Commission to examine Witnesses they may be summoned, &c. by the Commissioners to testify; and though no Process of Contempt lies thereupon, in regard no Writ was served, or Great Seal seen, yet if they do not obey such Summons, &c. the Court will commonly order them to come up to Town at their own Charge, and be examined here by an Examiner of the Court.

And in such Cases they may be subpoena'd to testify; and then an Attachment lies against them, if they do not appear, and be examined.

If Witnesses appear not upon a *Subpœna ad Testificandum*, Process of Contempt may be had against them: But they seem not within the Stat. 5 Eliz. to enforce the Appearance of Witnesses, because the Proceedings by *English Bill* in this Court are not strictly of Record.

'Tis said, Peers of the Realm as well as others, are to give their Testimony upon Oath, though they answer only upon their Honour. Peers examined.

When a Witness is brought before a Clerk in Court to be shewed, (which regularly he must be before his Examination by an Examiner of the Court) the Party, that produceth him, shall not only give a Note in Writing of the Name and Title, or Addition, of such Witness, and of the Parish where he lives; but if the Parish be within the Bills of Mortality, such Note shall also contain what Street and House he lives in, and whether he be a House-keeper or Lodger, to the end he may be more easily enquired for, and cross examined, if he be required thereunto. *Ord. Chan.* 204. Notice of Witnesses Names and Places of abode.

Also by Order 26 *Oft. primo Jac.* 2. where any Person shall ground any Motion or Petition on Affidavit of material Witnesses to examine, whereby to gain longer Time to examine, such Affidavit shall not only contain the Names of the cheifest of such Witnesses, but the Points, on which such Witnesses are desired to be examined, to the end the Court may see whether such Points be material to be examined, and whether before or after the Hearing. *Ordines Canc.* 207. Affidavit to ground Examination of Witnesses, to contain their Names and Points. &c.

Where there are several Defendants named in the Bill, some of which are not served with Process, those not served may upon Order be examined by either Party; and if both Sides examine them without Order, it is well, for thereby each Party has allow'd them to be good Witnesses. A Defendant examin'd by either Party.

A Defendant may by Motion of Course, if the Plaintiff desire it, be struck out of a Bill before Answer, in order to be examined as a Witness; and so he may after Answer, upon Paying Costs for the Dismission as to him. By the Plaintiff.

But if he has answered, and the Plaintiff is in doubt whether he will be a good Witness for him or not, or whether he may upon Hearing be found a necessary Party, he may let him stand in the Bill, and have an Order to examine him *de bene esse.* 2 *Chan. Cas.* 214.

Though a Defendant is drop'd by the Plaintiff, who never replies to his Answer, yet he cannot be examin'd as a Witness by the Defendant but by Order of Court. By the Defendant.

Defendant
disclaiming,
examin'd *de
bene esse*.

Where a Defendant has answered and disclaimed all Interest in the Matters in question, either Party on Petition or Motion may examine such Defendant *de bene esse*; which is a *Salvo* to the other Side for any just Exception, that can be made at the Hearing against Reading such Witness.

Trustees.

'Tis said, Trustees shall not be examin'd as Witnesses one against another.

Examin'd,
and after
made De-
fendants.

A Trustee examin'd as a Witness, was afterwards thought necessary to be, and was made a Defendant: But upon the Hearing, his Depositions were not allow'd to be read, though he should pay no Costs, nor should gain or lose by the Decree, (be it as it would) because the Decree must be against him, if decreed for the Plaintiff, and his Depositions are to affirm his own Act.

Administra-
tor not a
Witness.

'Tis said, If an Administrator sues, or is sued here, and pending the Suit, the Administration is revoked by his Practice, to the end he may be examined as a Witness, he shall not be examined.

Nor Parties
interested:

Upon a Commission to prove Customs, Parties interested shall not be examined.

Nor a Coun-
cellor, or his
Clerk, or a
Solicitor.

A Counsellor in the Cause, or his Clerk, are not to be examined as Witnesses.

Nor shall a Solicitor, or one that manages the Cause, be examined as a Witness therein.

One being served with a *Subpœna ad Testificandum*, upon shewing to the Court by Affidavit, that he was Solicitor in the Cause, was discharged of the *Subpœna*, with an Order made, That he should not be examined. *Cary's Rep.* 81.

Councillor
or Solicitor.

But in a like Case, where one had been of Counsel, or Solicitor for the Defendant in the Matter, it seems to be more equitably ordered, That he should not be examined upon any Interrogatories, which might compel him to answer any Matter, which came to his Knowledge as Councillor or Solicitor in the Cause; but that for other Matters the Plaintiff might examine him.

Regula.

The Rule in these Cases seems to be, They shall not be compelled, nor ought to be examined to the Secrets of the Clients Causes, or what they came to the Knowledge of as Counsel, Solicitor, &c. *Cary's Rep.* 127.

The

The Complainant's Attorney at Common Law, Attorney. was ordered to be examined touching the Breaking off of a Seal from an Indenture; but not to any Thing touching the Client's Title.

A Guardian hath been ordered to be examined as a Guardian. Witness.

Though ordinarily the Wife is not to be examined as a Witness for or against her Husband, yet in some Cases it has been allow'd; where it was to discover her Husband's Deceit or Fraud, as in the Case of Bankrupts, &c. Defendant's Wife examin'd against him.

Where the Defendant had examined his own Wife as a Witness, it was ordered, that the Plaintiff might take out a *Subpœna* against her on his behalf; and if the Defendant would not suffer her to be examined for the Plaintiff, then her Depositions taken on the Defendant's part to be suppress'd. For him.

It is noted, That where a Commissioner in a Cause is himself to be examined as a Witness, he must be first examined; and if others be examined in his Presence, he cannot be after examined, having heard the former Examinations; otherwise his Depositions may be suppress'd: 2 Chan. Caf. 79. Mich. 33 Car. 2. inter North and Champervnoon: And for that Cause a Commissioner, who had heard the Examinations, came up afterwards, and was examined in Court; and upon Motion, his Deposition was suppress'd. A Commissioner himself examin'd in the Cause.

In the Cause, *Exton, &c. contra Turner*, 2 Chan. Caf. 80. Mich. 33 Car. 2. the main Question at the Hearing was, Whether the Defendant at the Time of his Purchase had Notice of the Plaintiff's Title? And that Point being directed to a Trial, a Verdict pass'd for the Plaintiff: But Complaint was made to the Court, That the Plaintiff at the *Rolls* after the Hearing, got an Order *ex parte* to strike out C. B. (a Creditor, and one of the Plaintiffs;) and that being done, the said C. B. was used as a Witness at the Trial, which surprized the Defendant: And the Court set aside that Trial, and C. B. again made Plaintiff afterwards. One Plaintiff in a Cause struck out, and made a Witness at a Trial at Law, and the Trial set aside.

Note, In the same Cause it is said, That new Witnesses may be examined on a Bill of Revivor. *Idem* 81. New Witnesses examin'd on a Bill of Revivor.

Motion

Defendant not obliged to discover Witnesses.

Motion was made, That the Defendant might discover the Names of the Witnesses to a Deed: By which the Defendant claimed by his Answer, which the Plaintiff by his Bill charged to be antedated; but the Antedating denied by the Answer.

Lord Chancellor said, That might tend to prepare, or otherwise to tamper with the Witnesses; and therefore denied the Motion, but if there was apparent Suspicion, it might be. *2 Chan. Caf. 84. Hill. 33 & 34 Car. 2.*

Witness demurr'd to an Interrogatory.

A Witness demurr'd to an Interrogatory, because she claimed Interest in the Land: Disallow'd, because she did not swear it, nor shew what Interest. *2 Chan. Caf. 208. Mich. 27 Car. 2. inter Jefferson and Dawson.*

Defendant made a Witness before or after Answer.

If a Man be named a Defendant, who is proper to be a Witness, the Plaintiff may by Order strike out his Name before Answer, but after Answer he may by Order examine him as a Witness, though his Name be not struck out of the Bill, if he be otherwise competent, as if he disclaims, or have no Interest, or only as a Trustee. *2 Chan. Caf. 214. Hill. 27 & 28 Car. 2.*

Depositions in a former Cause, and between other Parties, read.

Vide 1 Chan. Caf. 73. Pas. 18 Car. 2. Ternit against Gresham: Where Depositions taken in a former Cause 30 Years since, between other Parties, were allowed to be read against one that claim'd not under any one of those Parties.

When Depositions in a Cause dismissed shall be used or not.

1 Chan. Caf. 173. inter Backhouse and Middleton, Trin. 22 Car. 2. In an Original Bill, where the Plaintiff moved to have the Use of the Depositions taken upon a former Bill of Revivor, which was dismiss'd, made use of, those Witnesses being dead. It was insisted for the Plaintiff, That though a Bill be dismiss'd, yet the Depositions taken on such Bill are to be made use of here, or at Law; and that the Bill was not dismiss'd on the Point of Right, but for Matter of Form; and that 'tis usual and frequent to use Depositions taken in one Cause, if for the same Matter, that is in Controversy in another, especially if against the same Defendant, as here it is. Which was admitted by the Defendant's Counsel.

If for the same Matter

A Difference taken.

But as to the Using of Depositions in a Cause dismiss'd, this Difference was taken: That tho' where a Cause is dismiss'd, the Matter of it not being proper for

for Equity to decree; yet the Fact in such Cause proved may be used as Evidence of that Fact between the same Parties, whenever it shall come in question again. But when a Cause is dismiss'd not upon that Ground, but upon some Irregularity, as for that it comes by Revivor, when it should come by Original Bill, so that in truth there was never regularly any such Cause in the Court, and consequently no Proofs, these Proofs cannot be used; for Proofs cannot be exemplified without Bill and Answer, nor can they be read at Law without the Bill, on which they were taken, can be read: But this Bill of Revivor could not be read at Law, and therefore the Proofs taken upon it cannot be used here. And so upon long Debate, and after several formal Arguments, it was ruled about *Michaelmas Term 1669.* in this Cause by the Lord Keeper. *Idem 174, 175.*

Difference when a Cause is dismiss'd upon an Irregularity, &c.

2 *Chan. Caf.* 250. *Hill. 30 & 31 Car. 2.* on an Appeal: Examination The Judges and Civilians on debate ruled, That the in Chancery Testimony of one *Nevil*, who was examined in *Chancery* between the same Parties, and cross examined used in Delegates. there, should be read before the Delegates, though it was objected, That the Appellant here should take the Advantage here, which he should have had, if he had been cross examined, for cross Examining a Witness sets him upright in *Chancery*, but not here.

A Bill was exhibited in *Chancery* concerning Tythes and Bonds of a Parish, which proceeded to Answer and Replication: Then he exhibited another Bill in the *Exchequer*, and there Witnesses were examined, and now proceeds in *Chancery*, and replies. The Defendant pleaded the Proceedings and Examination in the *Exchequer*: And ruled good as to the Examination of the same Matters; which being examined to there, were not to be examined in *Chancery*. 1 *Chan. Caf.* 233. *Trin. 26 Car. 2.* King against *Brownlow*.

Witnesses formerly examined in *Scaccario*, to be re-examined in *Canc.*

Witnesses formerly examined to the Damage on a Breach of Covenants, were not permitted to be re-examined on the same Interrogatories, although they spoke in the first uncertainly: *Inter Inglet and Inglet*, 2 *Chan. Caf.* 217.

No Re examination.

Witness
excused.

A Witness was excused from being examin'd touching Articles concerning a Lease of Land, whereof he had the Reversion.

Witness re-
fuses to be
cross exami-
ned.

If a Witness refuses to be cross examined, 'tis a Cause of Exception to his Testimony, and the Court on Motion will suppress his Depositions *ex parte*, for it argues Favour and Partiality.

Witness *Non*
Compos.

If a Witness produced is not of competent Understanding, the adverse Party may except against him, and the Commissioners ought not to examine him: But if they, who have the Carriage of the Commission, will examine him, the other Commissioners must certify the Matter to the Court, and make Affidavit of the Irregularity.

Witnesses
Credit.

If either Party is minded to examine to the Credit of the other's Witnesses, he must upon Exception filed, have an Order for so doing, which is sparingly to be granted. *Chan. Caf. 128.*

Witness mis-
taken, re-
examined.

Where it is apparent from Books, Accounts, &c. that a Witness has been mistaken in his Depositions, 'tis a good Cause to be shew'd to the Court, why he should be re-examined: And some seem to think such apparent Cause not necessary; but that Leave for re-examining is a Thing almost of Course.

A Master to
settle Inter-
rogatories.

But note, On Re-examinations a Master generally settles the Interrogatories.

But a Witness is not to be re-examined either in chief *before*, or on Account, &c. *after* Hearing, without Leave and Order of the Court: If he be so examined twice before, or twice after without Order, the Court will quash the later Depositions.

Special Com-
mission to re-
examine,
where the
Witness
made Oath
he was sur-
prized.

Note, A Witness alledged he had mistaken himself at a Commission: The Commission being return'd, he came to *London*, and made Oath; That he was surprized: A special Commission issued to re-examine the Witness; which was done accordingly, but was afterwards superseded by Motion, by Advice of the Master of the *Rolls*, with the Six Clerks, as contrary to the Course of the Court. *1 Chan. Caf. 25.*

Where

Where it was alledged, that a Witness had not fully answered the Interrogatories, for want of certain Court Rolls, and that he had referr'd himself to former Depositions; but does not say in what Cause, or where, the Court ordered a Master to examine the Matter: And said, If he should find that the Witness had not answered fully, he should then be ordered to answer fully. *Cary's Rep.* 116.

Interrogatories not fully answer'd.

Note. On an Appeal upon a Commission of Charitable Uses, *A. B.* moved for a Commission to examine an old Witness 80 Years old, who was not discovered till now, and unable to Travel, if she was able to travel, she would be examined at the Trial, (which was directed by the Court :) And though Publication on Hearing was pass'd, yet the Question being of Freehold, and properly triable at Law, it was reasonable that the Testimony should not be lost, and possibly the Land thereby: The Motion was opposed, because of Publication.

Examination after Publication, and after Hearing.

The Lord Keeper said, The Rule of Non-examining after Publication hath been strict in this Point, but the Court is the Judge, and the Examiners here, or by Commission, are Ministerial to the Court: So he ordered a Commission and Examination.

Bill in *Chancery* to stay Proceedings upon a Charter-party, and upon a Motion for a Commission to *Barcelona* (after Publication in the Cause here, and Trial directed) to examine whether the Court there had ascertained Damages for Fish to the Merchant, who demanded it there of the Master, in Deduction of Freight, for which the Master's Suit was there.

Commission after Hearing to examine at *Barcelona* on new Matters started at Hearing.

Lord Chancellor said, Take a Commission, and examine to it (if you will consent to go to Trial next Term) and return the Commission before the Term, and go to Trial, whether the Commission be return'd or no.

To which the Plaintiff and his Counsel assented; but moved first, that the Defendant might name Commissioners that the Plaintiff might not be delayed for Want thereof. Secondly, That the Return of the Commission by the Post, and not in the usual Way, might be allowed: And therefore the Lord Chancellor directed that the Commission should be delivered to

Commissioners how to be named.

Depositions
read in both
Cross Causes,
tho' after
Publication
in the first.

After Publi-
cation, no
Exception to
Witnesses:
Nor Deposi-
tion amend-
ed.

After Publi-
cation, Inter-
rogatories in
some Cases
may be exa-
mined unto.

Mr. H. to send the same by the Post to *Barcelona*, and when executed, to receive the same back. *Vide 2 Chan. Cas 75.*

In the Case of *Norcliff* and *Worsley*, 1 *Chan. Cas 236.* Depositions were allow'd to be read in both cross Causes upon an Order of Court, which Order was after Publication in the first Cause, wherein the Proof was made, but before Publication in the second Cause; so as the Defendants in that Cause had the Advantage, having the Liberty to see what was produced against them, and had an Opportunity of examining thereto. *Vide Kelw. 96. a. b. 100. a. Hard. 120.*

Note, by Kelw. 100. a. No Exceptions can be taken to Witnesses, after Publication of their Depositions.

Also after Publication, the Court would not suffer a Deposition mistaken to be amended.

But by Order of 27th February 19 Car. 2. If a Master upon Reference for stating Accounts, and the like, shall find particular Points or Circumstances needful to be proved to ground his Report upon, which are not fully proved, he may after Publication exhibit Interrogatories to examine Witnesses in Court to such Points, &c. if the Witnesses shall reside within 10 Miles of *London*; but if further off, he may direct a Commission into the County for the same Purpose, &c. See *Ordines Canc' 154, 156.*

Where after Publication, or Death of the Deponent, Depositions may be explained, but not contradicted by new Proof. See *Kelw. 96. a. b. and 1 Chan. Cas. 25. Hard. Rep. 180.*

FH

MUSEVM
BRITANNICVM

CHAP.

C H A P. XII.

Of Publication and Setting down the Cause for Hearing, as also of Hearings and Re-hearings.

THE Legal Sense of the Word *Publication*, and the Meaning of it in this Discourse, is that Power or Liberty, which is given to the Six Clerks, or the Examiner in the Cause, either by Order of Court, or by Consent of the Parties, to shew the Depositions openly, and to give out Copies of them; and such Publication is made or pass'd in this Manner, *viz.*

When both the Plaintiff and Defendant have examined what Witnesses they please, and are ready to go to Hearing, the Clerks on each Side may on Consent signified by their Signing each others Books, pass Publication.

Or where Witnesses are examined in Court, *i. e.* by the *Examiners*, they may give each other Rules for Publication, *viz.* First, an ordinary Rule, and then a Day to shew Cause why Publication should not pass. *Ord. Chan. 130.*

But where they are examined upon a Commission return'd, one Rule only will be sufficient to pass Publication, *Ibid.* And either Party, that has examin'd, and would have Publication pass, may give the Rule, &c.

The Day given by such Rule is a *Week*, which being expired, and no good Cause shewn to the contrary, Publication shall pass. *Ord. Chan. 130.*

But if any of the Depositions were taken before the Examiner, a Copy of the Rule and Order must be delivered to him, as well to authorize him to give Copies, as to tie him up from any further Examination.

Where the Cause is at Issue, and one Side has examined Witnesses, but the adverse Party has neither examined in Court, nor had a Commission, the other

Publication defined.

How made.

By Consent.

When examin'd in Court.

Two Rules for Publication.

1. Rule if by Commission.

Copy serv'd on the Examiner.

Rules to produce and examine Witnesses.

A Third
Rule to shew
Cause.

Where such
Rules are
necessary.

What a Rule
is.

Kinds of
Rules.

Rules to be
entred, &c.

Only in
Term.

Publication
enlarged.
Or stay'd.

Party first gives him a Rule to produce his Witnesses, and after that a second Rule to examine them; upon which he may either examine them in Court, or have a Commission of Course: And if he does neither, then a third Rule is given him to shew Cause that Day-seven-night, why Publication should not pass; which if he does not shew, Publication passeth.

And such respective Rules for Publication must be given as aforesaid, where Witnesses are examined in Court for the Plaintiff, or *ex parte* by Commission, or where none are examined on either Side, to conclude the adverse Party from examining.

The general Orders of the Court are sometimes called by the Names of *Rules of Court*; But the Word [*Rule*] *supra* (and as it is commonly understood) signifies a particular *Order of Course*, founded upon some general Order, or the common Course of the Court touching the ordinary Proceedings in a Cause; and which is entred and issued without either Petition or Motion.

And under this Definition or Explanation come these several Rules, *viz.* To Answer: To join in Commission: To Reply: To Rejoin: To produce Witnesses: To Examine them: To *publish Depositions*: To *bear the Cause*, and the like.

And all Rules are to be entred in the Common Book called the *House-Book*; and on Entring thereof, Notice shall be from Time to Time given to the Under-Clerk on the other Side, that is towards the Cause, that so the Client may not be surpriz'd. *Ord. Chan.* 168, 169.

And, *Note*, Rules are to be entred in Term-Time only.

The Court on Cause shewn will, and sometimes on a bare Motion, does enlarge the Time of Publication.

After Witnesses are examined, either upon Commission or in Court, Publication of the Depositions may be stay'd by Motion upon reasonable Cause shewn; as that the Party had other Witnesses to be sworn at the Time of the Commission, &c.

Where Witnesses are examined only to inform the Conscience of the Court, the Depositions are never published

published but by special Order, or by consent of Parties.

But, *Note*, no Witnesses are ordinarily to be examined, nor is any cross Bill to be admitted after Publication is past. No Witnesses or cross Bill after Publ.

Yet this Court hath sometimes after Publication past, allowed new Proofs, as *Probationes abornantes*, viz. which tend to the better Illustration or Explanation of the former Depositions. Except Explanatory Proofs.

As where *A.* and *B.* are suppos'd to have done such an Act, the Proof of which is but obscurely set forth in the Witnesses Depositions, they not giving any reasonable Testimony of their Knowledge touching the Performance of such Act in any particular. Now if such obscure Deposition be published, and the Deponent happen to die, others may well depose, that they were present at the Performance of that Act, and so explain the first Depositions. Example.

But if they depose any Thing contrary to the former Depositions, or which may alter any Part of the Substance thereof, such Deposition is void, and ought to be rejected. Not contrary Proofs.

The Court granted a Commission returnable the first Day of the following Term, and ordered, That Publication should pass a Week within Term, but would not order it the Day the Commission was returnable. Order for Publication.

When a Case happens that is out of the ordinary Rules for Publication aforesaid, the way to obtain an Order for Publication is either by Petition or Motion; and if it be by Motion you ought to have an Affidavit of Notice in this Form, viz. Motion for Publication.

In Canc. Inter A. B. Quer. & C. D. & al' Defendentes.

A. B. the Plaintiff in this Cause, (or it may be the Solicitor or any other Person) maketh Oath, That he this Deponent did on the . . . Day of this Instant, &c. leave a Notice in Writing at the Seat of Mr. *P.* the Defendant's Clerk in Court (as this Deponent is inform'd) with the said Mr. *P.*'s Clerk to the Effect following; That the Plaintiff intends to move the Court on (*Tuesday*) next, or as soon after as Council can be Affidavit of Notice.

Of Publication and Setting down.

be heard, that Publication may pass in this Cause the Day of the next Term, and that the Plaintiff may be at Liberty to set down his Cause for Hearing sometime the same Term, this being the 10th Day of *Annoque Domini &c.* A. B.

Furat' coram me, A. D.

Publication,
and Hearing
the same
Term.

But, *Note*, by the Course of the Court Publication and Hearing of the Cause are not to be in one and the same Term, except it be by Order of Court made on Petition or Motion, and Cause shewn.

It is before observ'd, That the Defendant may at any Time before Publication have a new Commission to examine his Witnesses, provided *Affidavit* be made That he, nor any for him, has not seen, &c. nor will see, &c. any of the Depositions taken in the Cause; which *Affidavit* may be in this Form, *viz.*

In Cant. Inter A. B. Quer. & C. D. & al' Defendentes.

Affidavit that
the Depo-
nents are
wholly igno-
rant of the
Depositions
taken in the
Cause.

The Defendants C. D. and E. F. and J. G. the Defendant's Solicitor in this Cause, do severally make Oath, That they, nor either of them, nor any other Person by their Privity, or to their Knowledge, or by their Procurement have seen, been informed of, or knows the Contents of any of the Depositions taken in this Cause, neither will they see, or endeavour to know the Contents of them, or any of them, until the said Defendants have executed their Commission, if the Court will be pleased to grant them one. And the said Defendants further make Oath, That they have not yet had one Witness examined in this Cause, and that W. D. T. B. &c. are material Witnesses for them, and without whose Testimony they are likely to be ruined in this Cause.

Furat' (tali die)
coram me T. M.

C. D.
E. F.

A new Com-
mission after
Publication.

And even after Publication on good Cause shewn (which must appear by *Affidavit*) the Defendant may have an Order for Examination of his Witnesses, provided he has not seen, nor knows the Contents of the

the Depositions formerly taken; and a Petition for that Purpose may be had in this Form, viz.

A. B. Quer. ?
C. D. Def. }

To the Right Honourable the Master of the Rolls.

The humble Petition of C. D. the Defendant in this Cause.

Sheweth,

THAT the Plaintiff the last Vacation took down a Commission for Examination of Witnesses, but your Petitioner's Witnesses being absent from Home, (or indisposed, &c.) could not attend the Execution of the said Commission, so that your Petitioner did not join or examine one Witness at that Commission; That this Cause was set down to be heard before your Honour, about the last Day of Causes in the last Term, and accordingly came on, (or much sooner than your Petitioner expected) and none attending for your Petitioner, your Honour made a Decree nisi, and ordered your Petitioner to pay five Marks Costs before he should be admitted to shew Cause; That J. H. Esq; one of your Petitioner's Commissioners is now in Town, and intends not to return into the Country till sometime after next Term. Wherefore, and for that your Petitioner's Clerk in Court hath not made any Copies of the said Depositions, nor knows the Contents of them, as appears by the Affidavit annexed; and your Petitioner being a very poor Man, must of necessity be ruined, unless he may examine his Witnesses.

A Petition for that Purpose.

Affidavit annexed.

Your Petitioner therefore humbly prays your Honour, That upon Payment of five Marks Costs for Non attendance, when the Cause came on, he may be at Liberty to renew the said Commission for the Examination of his Witnesses, returnable the first Return of the next Term, and that the Cause may again be set down to be heard before your Honour sometime the next Term *ad requisitionem Defendantis*; And that J. K. or L. M. Gent. may stand a Commissioner in the Room of J. H. Esq; and that unless the Plaintiff's Clerk in Court do forthwith strike out one of them,
your

Of Publication and Setting down

your Petitioner may be at Liberty to take which of them he thinks fit.

And your Petitioner shall pray, &c.

A Petition to enlarge the Time for Publication is usually in this, or the like Form, *viz.*

Sheweth,

The Plain-
tiff's Petition
for further
Time for
Publication.

THAT the Matter in Difference between your Petitioner and the Defendants being in Reference, it was proposed, That by Consent Publication should pass at, &c. next, and the Cause be heard the next Term, in case the Matter could not in the mean Time be amicably ended; and for that Purpose an Order by Consent was drawn up accordingly, whereby Publication is to pass at &c. next; That the Matter hath depended under Reference till now very lately, and your Petitioner doth now find that he is not like to make any amicable End, and hath not examined one Witness, and Publication passes to Morrow (or *within so many Days,*)

Your Petitioner therefore humbly prays, that Publication may be enlarged till the first Day of the next Term, your Petitioner not desiring to put off the Cause from being heard the next Term.

And your Petitioner shall pray, &c.

A. B.

And such Petitions are usually answered by under writing them thus, *viz.*

2^o Junii 1714.

Be it so, whereof forthwith give Notice.

J. Trevor.

*Mercurii decimo Die Junii Anno Regni Annæ Regine
decimo quarto. Inter A. B. Quer. & C. D. Defenden-
tem.*

An Order to
enlarge Pub-
lication upon
a Motion.

UPON the Plaintiff's humble Petition this Day preferred to the Right Honourable the Master of the Rolls, and for the Reasons therein contained, It is ordered, That the Time for Publication in this Cause
be

be enlarged till the first Day of the next *Trinity-Term*, of which personal Notice is forthwith to be given to the Defendant's Clerk in Court, &c.

A. B. & al. ? To the Right Honourable the Master
contra C. D. S of the Rolls.

The humble Petition of the Plaintiff.

Sheweth,

THAT by an Order of the 29th of *February* last it was ordered, That Publication should pass in this Cause the first Day of the then next Term, and the Cause be also heard sometime the then next Term. Another Petition to enlarge Publication

That there being some Overtures in Order to an Accommodation, your Petitioner did not set down his Cause, as the Order directs, neither hath either Side examined one Witness.

Wherefore your Petitioner humbly prays, that Publication may be enlarged to the first Day of the next Term, and may then pass, and that your Petitioner may be at Liberty to set down his Cause in the mean Time.

And your Petitioner shall ever pray, &c.

10 Junii 1714.

Let it be so, whereof forthwith give Notice, J. T.

Luna 14 die Junii Anno Regni, &c.

A. B. & al' Quer. C. D. & al' Defendentes.

UPON Consideration this present Day had by the Right Honourable the Lord Chancellor of Great Britain of the Plaintiff's humble Petition, and for the Reasons therein contained, his Lordship doth order, That Publication doth pass in this Cause on the 31st Instant; and that the said Cause be set down for Hearing within ten Days after. An Order for Publication to be on a certain Day.

Per T. G. Dep. Reg.

And the like Order, *mutatis mutandis*, may be to hear the Cause on a Day certain. *Vide infra* p. 333. such an Order.

Mer-

Of Publication and Setting down

Mercurii 20 Aprilis Anno Regni, &c.
Inter A. B. Quer. & C. D. & al. Defendentes.

Order by
 Consent that
 Publication
 do pass, and
 the Cause
 heard in the
 same Term,
 and the De-
 fendant to
 appear *gratis*.

IT is this Day ordered by Consent of the said Parties, Plaintiff and Defendants, and their Counsel, Clerks in Court and Solicitors, That Publication do pass in this Cause the first Day of *Trinity-Term* next, and that this Cause be heard some time the same Term; and that the said Defendants do appear *gratis* to hear Judgment on ten Days Notice to their Clerk in Court. *G. Edwards Dep. Reg.*

Lune 10 Maji Anno Regni, &c. *Inter A. B. &c.*

Order for ad-
 journment the
 Hearing of a
 Cause till af-
 ter the Term,
 notwith-
 standing an
 Order for
 Publication
 and Hearing
 within Term,
 &c. on Cause
 shewn.

UPON Opening of the Matter this present Day unto the Court by Mr. H. being of the Plaintiff's Counsel, it was alledged, That the Plaintiff, by an Order made last Term, was to bring his Cause to a Hearing this Term, and Publication was to pass the first Day of this Term, and in the mean Time the Injunction was continued: But that there having been a Treaty between the said Parties, and the Plaintiff being in hopes to accommodate the Matter in an amicable Way, hath not examined any Witnesses, nor hath the Defendant examined one Witness, and the Plaintiff hath set down the Cause for the last Day of Causes: It was therefore prayed, that Publication may be enlarged till the last Day of the Term, and that the Cause may be adjourned to be heard some Day of Causes after the Term, and the Injunction be in the mean Time continued, which the Court held reasonable, and doth order the same accordingly.

Per E. G. Dep. Reg.

Jovis 26 Aprilis Anno, &c. *Inter A. B. &c.*

An Order by
 Consent to
 hear a Cause
 on a Day cer-
 tain.

IT is this present Day ordered, by and with the Consent of all Parties, Plaintiffs and Defendants, and their Clerks in Court, that this Cause be set down to be heard on *Friday* the 10th Day of *May* next, and all the said Parties are to attend the said Hearing *gratis*.

Note,

Note, This Cause, after divers Hearings, the 10th *May*, the 19th *Julii*, and the 28th *Novembris*, was at last on a Petition ordered to be re-heard on the 22d *Januarii* by the following Order.

UPON Consideration this Day had by the Right Honourable the Lord Chancellor of *Great Britain* of the humble Petition of *A. B.* there- by setting forth, That the Petitioner and other Defen- dants claiming upon several Interests the Preception of the Rents and Profits of the Manor of *H.* in *Com. S.* for the Residue of a Term of 21 Years demised to the Plaintiffs in Trust: The Plaintiffs thereupon exhibi- ted their Bill to have the Judgment of the Court, to whom the Benefit of the Trust belonged. And upon Hearing of the Cause in Court on the 10th of *May* last past before the Honourable the Master of the Rolls, it was ordered, That a Case be made and agreed on by Counsel on both Sides, and the Court attended therewith, who after Advice with the Judges, would pronounce such Decree therein as should be just. Which Case being accordingly made and agreed on, and the Master of the Rolls attended therewith the 19th of *July* last, Counsel on all Sides was thereup- on heard before the said Master of the Rolls at his House, assisted by Mr. Justice *T.* but at that Time no Decree or Opinion was pronounced, until the 28th Day of *November* last, at which Time the Master of the Rolls was pleased to deliver his Opinion (con- trary to the Opinion of the said Judge) That the Be- nefit of the Trust doth belong to the said Defendant *B.* and his Wife, and not to the Petitioner, and so decreed the same: Whereby the Petitioners and four fatherless Children, whose only Substance dependeth thereup- on, will be expos'd to Want: It was therefore prayed, That his Lordship would be pleased to vouchsafe a Re-hearing of this Cause. Whereupon it is ordered by his Lordship, That this Cause be set down to be re-heard before his Lordship upon *Wednesday* the 22d of *January* next, being the Day before the next Term, at three of the Clock in the Afternoon, at which Time his Lordship will desire some of the Lords the Judges to assist him; of which the other Side are to give No- tice,

An Order upon a Peti- tion for a Re-hearing of the same Cause on a Day certain.

Of Publication and Setting down

tice, and in the mean Time the Signing and Inrolling the Decree is stayed.

Vide other Orders of Court *postea* in the Chapter of Orders, &c.

An Order, that the Plaintiffs do procure their Cause to be set down to be heard. But in Default thereof the Injunction to be continued, and Publication to pass the first Day of the same Term, and the Defendants to appear and hear Judgment *gratis*.

WHereas by an Order of - - - in the 13th Year of her Majesty's Reign, and for the Reasons therein contained, it was ordered, That the Injunction formerly granted in this Cause should be revived and continued until the Hearing thereof, unless Cause, and by a subsequent Order of - - - last, the said Order was made absolute. Now upon Motion this Day made unto this Court by Mr. B. being of the Defendant's Counsel, in the Presence of Mr. G. being of the Plaintiff's Counsel, the said Defendant's Counsel alleged, That the End of the Plaintiff's Bill is to be relieved against a Bond of the Penalty of 50 *l.* entred into to the Defendants, as Churchwardens or Overseers of - - - in the County of - - - to indemnifie the said Parish against a base Child by him begotten; and also to be relieved against a Bail Bond entred into by the other Plaintiffs his Bail; and that the said Defendants had expended above 40 *l.* or thereabouts, beyond what they had received, and have been delayed these four Years by the Injunction of this Court, and thereby put to great Expences, and therefore it was prayed that the Injunction might stand absolutely dissolved: But upon Hearing the Plaintiff's Counsel, who offered to speed their Cause to a Hearing the next Term, and what could be insisted on by either Side this Court doth order, That the said Plaintiffs do procure their Cause to be set down to be heard sometime the next Term; and thereupon the said Injunction is to be continued. And to the End the Cause may be heard as aforesaid, the said Defendants are by Consent, to rejoin, and join in a Commission *gratis*, and both Sides are to examine their Witnesses to, as Publication do pass the first Day of the same Term, and, by Consent of the said Defendants, are to appear *gratis* to hear Judgment on ten Days Notice to their Clerk in Court. But in Default of the Plaintiffs procuring their Cause to be set down for Hearing, as aforesaid, the said Injunction is to stand dissolved,
Upon

UPON Motion this Day made unto this Court by Mr. B. being of the Defendant's Counsel, it was alledged, That the Plaintiff's Bill was to be relieved against a Bond, &c. and that the Defendants had already expended above 40*l.* thereabouts beyond what he received, and had been delayed by the Injunction of this Court these four Years by frivolous Exceptions put in to the Defendant's Answer, and other vexatious Persecutions, whereby the Defendants have been at very great Expence; it was therefore prayed, That the said Injunction might stand absolutely dissolved. Whereupon, and upon Hearing, Mr. G. being of the Plaintiff's Counsel, and what could be alledged on either Side, it is ordered, That the said Plaintiffs do bring on their Cause to be heard the next Term; to which Purpose the Defendants are forthwith to rejoin and join in a Commission, and both Sides are to examine their Witnesses, so as Publication do pass a Week in the said Term, and the said Defendants are to appear *gratis* at the Hearing of the Cause on ten Days Notice to their Clerk in Court: And in Default of the Plaintiff's bringing on this Cause to be heard by the Time aforesaid, the said Injunction is to stand absolutely dissolved.

An Order that the Plaintiffs do bring on their Cause to be heard next Term, and Publication to pass a Week in Term, and the Defendants to appear *gratis* at the Hearing on 10 Days Notice. And, in Default of the Plaintiff's bringing on his Cause to be heard accordingly, the Injunction to stand absolutely dissolved.

Of setting down and hearing the Cause.

THE next Term after Publication the Plaintiff may of Course have the Cause set down for Hearing before the Lord Chancellor, or Master of the Rolls. And by special Order, *ut supra*, it may be set down the same Term that Publication is of; the ordinary Way to obtain which is by Petition, but it may be also had upon a Motion, as appears *supra*.

Of setting down the Cause.

And if the Plaintiff doth not set down his Cause for Hearing in two Terms after Publication is past, it may be set down *ad requisitionem Defendantis*.

By the Plaintiff.

Where a Cause is set down at the Defendant's Request, if the Plaintiff (not being served with Process *ad audiend' Judicium*) and his Counsel attend at the Day, and the Defendant with his Counsel does not attend, yet the Plaintiff shall have no Costs, for he was not compelled to appear, and the Defendant

Ad requisitionem Defendantis.

might

might chuse whether he would go on to have the Cause heard or not.

But ordinarily, if the Party, who procures a Cause to be set down, is not ready to hear it at the Day, but desires it may stand over to another Day, he must pay the other Party the Costs of the Day, if the Court sees it fit to indulge a further Day.

How Causes
are set down.

In order to have a Cause set down and heard, the Six Clerk in the Cause must be applied to six Days at least before the End of the Term, that he may inform himself of the State of the Cause, of the long or short Dependance thereof in Court, of the Antiquity of Publication, of the Weight or Value of the Cause, and all other Circumstances material to inform the Lord Chancellor, or Master of the Rolls of at the Time of setting down of Causes. *Ord. Chan. 135. 210.*

Six Clerks to
attend there.
in.

The Six Clerk is not to refuse to offer the Cause to be set down, if he be attended in such Time as afore-said, nor to come unprepared to inform the Court of the Nature and Circumstances of the Cause; For which neither he, nor any of the Under-Clerks, nor any of the Registers are to take any Fee, Gratuity or Reward. *Ord. Chan. 136.*

No Fee, &c.
to be taken.

No Money or other Reward shall be exacted or taken by any of the Six Clerks, or by any of the Registers for or in their Behalf for the preferring and setting down of any Cause for Hearing, but only such Fees as are behind and unpaid of their Termly Fees and Duties. And if any Cause happen to be set down for Hearing, wherein they shall not be paid their Fees and Duties, they may alledge the same in Stay of the Hearing of the Cause. *Ibid. 136.*

Except what
in Arrear.

Papers of
Causes to be
set up.

A Note or Paper of all Causes, Pleas, Demurrers, Exceptions to Reports, and the like, that are ordered to be set down for Hearing, shall be set up and affixed by the Registers in their Office two Days before the same are respectively appointed to be heard; and in order thereto, all Clerks, Solicitors and others, are to bring to the Register's Office, in due Time, all Orders for setting them down, else the said Causes, &c. shall be put off till further Order. *Ord. Chan. 196.*

Priority of
Publication.

The Day a Cause is set down for Hearing upon, must be sooner or later, according to the Priority of Pub-

Publication with Respect to Causes presented for Hearing.

The ancient Course was to present the Cause to be set down at the End of the Term, when the Chancellor, &c. appointed Hearings for the ensuing Term.

There is an ancient Order, That at the Hearing Certificates should be brought, that the Bills and Answers were duly filed with the Six Clerk, and the Books duly signed, else the Cause was not to be heard, and the Party was to pay good Costs. *Ord. Chan. 77* Certificate that the Pleadings are duly filed, &c.

And by a late Order, no Motion shall be made to hasten a Cause to Hearing, which is either Adversary or by Consent; nor any Cause entred with the Register for Hearing, notwithstanding any Order, without a Certificate first had from the Six Clerk, that the Pleadings are duly filed, for which no Fee is to be taken. *Ord. Chan. 232.*

'Tis said cross Causes ought to be heard together, if the Answer in the last commenced Cause be come in before the first Cause is heard. Hearings in cross Causes.

But if there be cross Causes, and Publication is past in both, and one of the Plaintiffs omits to serve *Sub-pena to hear Judgment*, his Cause shall not come on at the same Time with the other, except the other Party consents. *Vide post 345.*

A cross Bill is a Bill brought by a Defendant against a Plaintiff in a former Bill depending, touching the Matter of such Bill; but it must be brought before Publication is past on such first Bill, and not after, except the Plaintiff in the cross Bill will go to Hearing upon the Depositions already published, because of the Danger of Perjury, if the Parties should, after Publication of the former Depositions, examine Witnesses *de novo* to the same Matter, that had been before examined unto. Cross Bill, what. Not to be after Publication, except, &c.

By an Order of 2 *Jac. Secundi*, the Clerks in Court on either Side, are to attend the Hearing of the Cause. *Ord. Chan. 210.* Clerks to attend.

And where a Cause comes to be heard before the Master of the Rolls, the Clerks in Court on each Side shall attend the Hearing (as they do when before the Lord Chancellor) to the End his Honour may be informed, if there be Occasion, that the Cause is ready for Hearings before the Master of the Rolls.

Appearing
gratis.

for his Judgment; and that the Parties appear *gratis*, or that they were regularly served with Proceſs to hear Judgment, as the Caſe ſhall require. *Ord. Chan.* 210. *Vide pag.* 341.

Where a Caſe is ordered to be ſpeeded or heard in ſome ſhort Time at the Requeſt of either Party, he is commonly ordered to do every Thing *gratis* on his Part in order thereto; and to do a Thing *gratis* is to do it voluntarily, and not by Compulſion of Proceſs.

Or on Proceſs.

Subpœna ad audiend' Judic.
how taken out.

But ordinarily when the Caſe is ready for Hearing, Proceſs of *Subpœna ad audiendum Judicium* muſt be ſued out and ſerved on the Party, which is iſſued upon a Note in Writing, under the Hand of the Register, or their reſpective Deputies, of the Day, that the Caſe is ſet down for Hearing;

How returnable.

'Tis ſaid, this Writ muſt be returnable thus, *viz. ad eſſend' in Canc' ad audiend' Judicium*, &c. ſome Days before the Day of Hearing, except in the Beginning of the Term, when the Time will not bear it; and on the Back of the Writ muſt be ſet down the very Day appointed for Hearing.

How ſerved.

It is to be ſerved perſonally, or left with one of the Houſe or Family of the Party; and if above twenty Miles from London, it muſt be ſerved fourteen Days excluſive before the Time to hear Judgment, except in the ſhort Vacation between *Eaſter* and *Trinity-Terms*, and then ten Days. *Ord. Chan.* 116.

But if *within twenty Miles of London*, if it be ſerved ten Days before the Time to hear Judgment, 'tis ſufficient; and in the ſhort Vacation it needs be ſerved only eight Days before the Return.

Proof of Service.

Producing the *Subpœna* at the Hearing, has been held a good Proof, *Prima facie*, of the Service of it, though there was no Affidavit of ſuch Service; for it was incumbent on the other Side to make Affidavit *e contra*.

But now an Affidavit of Service is required, which is more reaſonable, becauſe of the Coſts to be paid for not appearing.

The Method or Manner of hearing Cauſes in Court, is generally thus, *viz.*

Both Parties appearing, &c. one of the junior Counsel for the Plaintiff opens the Bill, and another for the Defendant opens the Answer. After which, the Plaintiff's Senior Counsel states the Case, and the Matters in Issue, and shortly touches on the Proofs: And then they proceed to read first on the Plaintiff's Side, and then on the Defendants, the Proofs to such material Points as are controverted; the Counsel on each Side debating the Matter either of Law or Equity, that arises thereupon, the Plaintiff's Counsel always concluding the Argument. After which the Court pronounces the Order or Decree, the Minutes of which are taken down by the Register.

Manner of hearing Causes upon Proofs, &c.

If the Hearing is on Bill and Answer only, then after the Bill is opened, the Answer is to be wholly read, and must be admitted true in all Points; and no other Evidence is to be given but Matter of Record, to which the Answer refers, and which is proveable by the Record. *Vide Ord. Chan. 122: and ante pag. 149, to 153.*

Hearing on Bill and Answer, &c.

If upon a Bill and Answer only there be sufficient Ground for a Decree, the Plaintiff is to proceed to Hearing without examining Witnesses.

And if in such Case the Court shall not find Ground for a Decree, the Bill shall be dismiss'd with Costs, or the Plaintiff shall be admitted to reply, &c. if he desire it, on paying down 10*l.* within four Days after such Hearing, or else the Dismission to stand, and the Order is to be so drawn up.

And if such Leave to reply be not prayed, or the said 10*l.* not paid, the Decree is to stand absolute, and is a good Bar to a new Bill.

If the *Subpoena* to rejoin be not served, &c. though it be sued out, the Cause must be heard on Bill and Answer.

Where a Cause comes to Hearing here, which has been formerly decreed in the *Exchequer*, such Decree is first to be read, and then the Court proceeds to hear the rest of the Evidence on both Sides.

On a former Decree.

If the Defendant appears not, then Affidavit being made that he was served with the *Subpoena* to hear Judgment, the Bill is opened, and the Answer read, and Proofs are read as to what the Answer confesses

Defendant not appearing, Hearing *ex parte*.

Day to shew
Cause.

Costs certifi-
ed to be paid.

Plaintiff not
appearing,
Dismission
with Costs.
Plaintiff not
proceeding,
dismissed, or
pay Costs.

E contra
where *ad Re-*
quisitionem De-
fendentis.

Hearing ex
parte *vers.*
Defendentem.

not ; and if the Matter appears plainly for the Plain-
tiff, the Court may decree it for him accordingly.
Ord. Chan. 136. Post. 344, 345.

But then Day shall regularly be given the Defen-
dant to shew Cause to the contrary such a Day as the
Court shall think fit (perhaps the last of that Term,
or first of the next) the Defendant paying the Plain-
tiff, or his Clerk in Court, such Costs, as the Court
shall assess upon this Hearing. *Ibid.*

And the Order is to be penned by the Register ac-
cordingly, *viz. It is decreed so and so, &c. unless the De-*
fendant shall, &c. pay, &c. and shew good Cause, &c.

And before he be admitted to shew Cause against
it, he shall produce a Certificate from the Plaintiff's
Attorney in Court, That the Costs are paid, or an Af-
fidavit of the Tender and Refusal.

And if upon Hearing the Plaintiff does not appear,
the Defendant (except the Cause was set down at his
Request) shall be dismissed with Costs.

If the Plaintiff procures the Cause to be set down
for Hearing, and serves not the Defendant with a *Sub-*
pœna ad audiendam Judicium ; if the Defendant attend,
and the Plaintiff does not proceed, or go on in hear-
ing the Cause, the Bill is sometimes dismissed ; or
however, the Plaintiff must pay the Costs of the Day ;
for the Plaintiff is intended to be always ready and
present in Court to prosecute the Suit ; and the De-
fendant might find the Cause in the Book or Paper of
Causes, and so had Reason enough to attend for his
own Safety ; Because the *Subpœna* might be left with
some of his Family, which is good Service, though he
had no Notice of it.

But if the Cause were procured to be set down by
the Defendant himself, and the Complainant appears
not, the Defendant shall take no Advantage thereof,
except the *Subpœna* to hear Judgment appears to have
been served ; for otherwise the Complainant is in no
Default.

Where no Counsel appears for the Defendant at the
Hearing, and Process appears to have been served, the
Answer of such Defendant is to be read in Court be-
fore the Decree be made.

By Order upon Consent, the Parties may appear, answer, and go to Hearing *gratis*; and so they may do, if they please, without Order, save only for so much as breaks in upon the common Course of the Court, as Time for Publication, and the like, which cannot be altered by Consent, without a special Order to that Purpose. *Vide pag. 338.*

While the Regularity of Depositions was depending before a Master, and unexamined, the Cause was set down for Hearing, neither Party having procured a Report one Way or the other. The Court could not proceed to hear the Cause, and was about to order the Party in Fault, (*i. e.* he that set down the Cause) to pay the other Costs of the Day: But his Counsel offering to pay 5 *l.* the other Side accepted it.

Cost on irregular setting down a Cause.

About the Year 1636. four Causes were usually set down to be heard each Day; and where by Reason of the Infection, Causes had been delayed a whole Term or more, yet six Causes only for each Day were set down for the ensuing Term: Which of late Years have been increased to twenty or thirty Causes set down to be heard for each Day.

Causes increase.

By an Order of the 27th of February 1667. which see in the Orders of *Chancery*, pag. 156. Parties are at their Peril to make their full Proof, *i. e.* examine all their Witnesses) before Publication: But if after Hearing, there be a Reference to a Master for stating an Account, or the like, and he shall find any particular Points or Circumstances needful to ground his Report upon, which are not fully proved, nor could properly be examined to before the Hearing, he shall direct the Parties to draw Interrogatories to such Points or Circumstances only, and examine thereupon in Court by the Examiners, if the Witnesses be, or reside within ten Miles of *London*; but if further off, and the Parties desire it, he may direct a Commission into the Country, which is to be made out by the Six Clerks; and Publication shall pass thereupon according to the Course of the Court in such Cases.

Proofs after Hearing.

And the common and usual Way now is, not to examine to a Matter of Account before the Hearing, but after, before a Master, if the Witnesses be in

Matters of Account.

Matters of
Trust, &c.

The Court
upon Hear-
ing, will not
direct a Tri-
al at Law, if
no Damage
appear
whereon to
ground a De-
cree.

Defect of a
Grant of
Dutchy
Lands, sup-
plied at the
Hearing.
Where a
Deed confes-
sed shall not
be read, un-
less the
Plaintiff
prove it.

Several Coin-
cident Causes
brought to
Hearing.

Town, &c. or if they are not, then by a Commission to be directed by the Master, upon an Order for his being arm'd (as they call it) with a Commission, tho' by the foregoing Order, it seems he is always arm'd to that Purpose.

When a Trust is confessed by the Answer, there needs no further Hearing of the Cause; but a Reference is presently to be made of the Accounts of the Trust to be taken, and stated by a Master. *Vide ante pag. and Post of Reports.*

Where upon a Bill for Tythes, the Defendant did not admit the Plaintiff's Title, but alledged an Extinguishment by Unity of Possession: And upon Hearing, the Court would not direct a Trial at Law, because the Plaintiff had made no Proof of the Value of the Tythes, nor what Cattle had been depastured in the Place where, &c. So that no Damage appeared to them, whereon to ground a Decree for the Plaintiff, if the Verdict should go for him: So the Bill dismiss'd. *Hard. Rep. 4. inter Attorn' Gen' ann Straut.*

Where Title to Dutchy Lands was made in the Bill by Grant under the Great Seal; and yet by shewing a Grant under the Dutchy Seal at the Hearing, the Defect was supplied. *Vide Hard. 171.*

If a Bill, setting forth a Deed of Settlement of Lands in Trust, is brought to compel the Trustee to execute an Estate, &c. And in his Answer the Trustee says, He believes there is such a Deed, as in the Bill is set forth; yet upon the Hearing, the Plaintiff shall not read the Deed without proving it: For the Confession goes no further than what is set forth, and will not warrant the Reading of a Deed produced, tho' it hath such Clauses in it. *2 Ventr. 361. Pas. 35. Car. 2.*

If several coincident Causes be brought to Hearing at the same Time, a Decree may be against one, who is no Party to some of the Bills. *2 Chan. Cas. 234. Trin. 29 Car. 2.*

Of Rehearings.

Where either Party is not satisfied with the Order made upon the Hearing, he upon his Petition, shewing some Cause for a Rehearing signed by two or more Counsel (one at least of which must have been Counsel in the Cause, or is of good Note in the Court) signifying, that they conceive there is good Cause for a Rehearing; The Court will at any Time before the Order is signed and inrolled, order the Cause to be reheard.

Rehearings
on Petition.

If the Cause was heard before the Lord Chancellor, the Petition must be to him; and if before the Master of the Rolls, then the Petition may be either to the Lord Chancellor, or to him; but 'tis usually to the former.

To the Lord
Chancellor,
&c.

And note, The Cause is commonly by the Order for Rehearing, appointed to be set down for a certain Day, on which it is to be reheard.

Time ap-
pointed.

And two Days at least, before the Day appointed for Rehearing, the Party appealing shall attend the Lord Chancellor with a true Copy of the Order or Decree appealed from, and of the Petition, upon which the Rehearing was granted; That so his Lordship may be apprised of the Order and Decree, and of the Objections against the same. *Ord. Chan. 233.*

Lord Chan-
cellor to be
attended be-
fore the Day.

And whereas by an Order of the 12th of May 1686. it was ordered, That no Rehearing or Appeal should be granted, except the Appellant should depose 5 l. in the Register's Hands to recompence the other Party in Costs, if on such Rehearing he should not be relieved. By a later Order 10 l. was to be deposited. and by a subsequent Order it is made 20 l.

20 l. to be
deposited.

And if such 20 l. be so deposited, some convenient Time before the Day of Rehearing, (as four or five Days before) 'tis said to be sufficient.

Time for de-
positing it.

And note, The Granting a Rehearing shall not any way stop or hinder any Proceedings on the Order or Decree appealed from, without the special Order of the Court: But that the Party in Possession of the Order or Decree, shall be at Liberty to proceed therein as if no Rehearing was granted. *Ord. Chan. 208.*

Not to stop
the Executi-
on of a De-
cree without
Order.

Order for it
discharg'd,
and Part of
the Money
paid.

An Order was obtained for a Rehearing, but some Opposition being afterwards made thereto, and that, and what was alledged for a Rehearing, being referr'd to a Master, on his Report the Order was discharged; And the Court ordered five Marks of the 10*l.* deposited in the Register's Hands for the Rehearing, to be paid to the Plaintiff, in whose Favour the Decree had been made, for his Charge of the several Motions and Attendances therein.

And note, This was before the Order for depositing 20*l.*

Causes of
Rehearing.

Where a Plaintiff in a Bill of Revivor omitted to pray Process against one of the Defendants, yet several Motions being afterwards made in the Suit in his Name, and a Commission executed in his Name, and then a decretal Order pass; This Omission was held to be no Cause for a Rehearing, the Defendants having made this Person a Party by the Proceedings; and all having submitted to it, his Name must be used as a Defendant to the End of the Cause.

One exhibited his Bill for Discovery of Evidences, and thereby made a Title to Lands, which the Evidences did concern. The Defendant also intituled himself to the same Lands, and so justified Detaining the Evidences for the maintaining of his own Title: Whereupon after Examination of Witnesses on both Sides, the Matter on the Hearing appeared doubtful, by Reason of a Repugnancy in the Evidence, and therefore the Court ordered the Plaintiff to bring an Action of Trespass against the Defendant, and that the Defendant should plead to the Freehold; and thereupon Issue should be joined, and tried at the Bar of *B. R.* and that he had the Verdict, should have his Possession established in the *Chancery*, till the other could make out a better Title. *Crompt. Jurisd.* 44.

Defendant
not appear-
ing.

If the Defendant, or his Council do not appear at the Day of Hearing, then after the Bill is opened, and Affidavit made of the Service of Process to hear Judgment, the Cause is to go on; *viz.* To read the Defendant's Answer at large, and observe what he denies, confesseth, or doth not directly answer unto; and then to read the Plaintiff's Proofs: And the Matter falling

falling out apparently for the Plaintiff, the Court Decree *pro Quer.* will decree the same accordingly. *Ante* 340.

But commonly it is in such Cases so decreed, with a *Proviso*, viz. unless the Defendant shew good Cause On *Proviso*. to the contrary, upon the Return of a *Subpœna* to shew Cause. *Ibid.*

If there be cross Bills exhibited by each of the Parties for the same Cause, and both Suits be published, and ready for Hearing, that Party's Cause, that does not serve Process, shall not be heard, unless the other Party also desire it. Cross Bills.

C H A P. XIII.

Of Dismissions, and Decrees; and of drawing up, enrolling, executing, exemplifying and reviving Decrees.

A Dismission is a final Sentence or Decree of the Court, whereby the Plaintiff's Bill or Suit is defined. Dismission
adjudged not fit for this Court to take Cognizance of.

A Dismission is sometimes for want of Service of Causes of the *Subpœna*; sometimes on the Defendant's Answer Dismission. and Disclaimer; oftentimes on a Plea or Demurrer to the Bill, the Causes whereof see in Title *Pleas and Demurrers*; as, for commencing and proceeding in a Suit at Common Law for the same Matter, pending a Suit in this Court, &c. and where-ever any Plea or Demurrer is allowed, the Bill is generally dismissed.

Also, it may be upon the Plaintiff's Ceasing or Forbearing to prosecute his Suit here, or by his Doing In what Cases. somewhat, which seems to make himself a Judge of the Matter in Question; or it may be upon his own Prayer, and often is upon Hearing of the Cause, i. e. where it appears that the Merits thereof are not proper for a Court of Equity.

Dismission upon Hearing is sometimes for Want of Parties, sometimes because the Matter belongs to another Court to determine; as, to the Courts of Law, Cause.
or

or Ecclesiastical Courts, or that the Conuzance thereof belongs to another Court of Equity, as the Universities and Cinque Ports, &c. or that the Matter in Demand is below the Dignity of this Court, either in respect of its Value, as under 10 l. or in respect of its Nature, being in it self dishonest, or accompanied with something of Fraud, Corruption or Oppression, or hath an evil Tendency, as well as upon the Merits, or for Want of Equity in the Cause.

If on Hearing, and inrolled, not to be altered by Motion, &c. but by Bill of Review.

If a Dismission be decreed upon a full Hearing, and drawn up, and signed and inrolled, it may not be altered by any Motion or Order afterwards made for retaining the Cause; but only by a Bill of Review; nor shall a new Bill be admitted but upon Affidavit of new Matter, (as in the Case of a Bill of Review) and a special Order of Court made thereupon.

Contra, If for want of Prosecution, &c.

But if the Dismission were for want of Prosecution, and not on the Merits of the Cause, then sometimes on Motion, and *Excuse* of the Delay of Proceeding, and on Paying Costs, the Plaintiff's Bill by special Order is retain'd, or he has Leave given him to exhibit a new One: The Doing of which is merely at the Discretion of the Court.

Costs spared, on probable Cause of Suit Or Cause ended.

Also probable Cause of Suit will ordinarily weigh with the Court, and induce 'em to spare Costs, where the Plaintiff is dismiss'd on the Hearing.

A Cause being ended by Agreement or Arbitration, or the like. Leave was given to the Plaintiff to dismiss his own Bill without Costs.

Or Feme Sole married.

And so where a Feme Sole was Plaintiff, and she married before any Witnesses examined: *Sed quare*, For thereby she may take Advantage from her own Act.

Costs paid on Hearing, or on Disclaimer, Plea or Demurrer.

But if the Dismission be on the Hearing, and there appears no such probable Cause, &c. the Plaintiff ordinarily pays full Costs, to be taxed by a Master.

And if the Dismission be upon a Disclaimer, Plea or Demurrer, the Plaintiff is to pay seven Nobles Costs.

On Plaintiff dismissing his own Bill, &c.

Also if the Plaintiff dismiss his own Bill, or the Defendant dismiss it for Want of Prosecution, the Plaintiff must by the late Statute, 4 *Anna*, for *Amendment of the Law*, pay full Costs, to be taxed by a Master.

And

And 'tis said, That Leave for the Plaintiff to dismiss his own Bill, may be had either on Petition, or on Motion: But ordinarily no Dismission, or Retainer after a Dismission, will be granted upon a bare Petition only.

Or, want of Prosecution.

And in Case there are several Defendants who defend the Suit severally, (*i. e.* by *several Clerks*) Costs must be paid by them severally.

Several Costs to several Defendants.

And where several Defendants are served with Process to answer, and the Plaintiff does not file his Bill against them in Time, they may be *dismiss'd* the Court with Costs; and so may any served with Process, tho' he be not made a Defendant in the Bill.

Where the Plaintiff discontinues his Suit or Prosecution *three whole Terms* after that, wherein the Defendants have answered, (the Six Clerk certifying the same) the Cause may be dismiss'd of Course upon Motion.

Suit discontinued after Answer.

If the Plaintiff delays Replying till the third Term, or so long that there is Reason to think that he affects Delay, the Court will, upon Certificate and Motion, order him to speed his Proceedings, or that his Bill be dismiss'd.

Before Replication.

But if the Plaintiff replies soon after the Answer comes in, a Dismission is not to be mov'd for till four Terms after the Replication put in; and also in Case there have been no Proceedings after the Replication, *viz.* either by Motions, References, Examination of Witnesses, or the like.

After Replication.

After Appearance, and before Answer, or after Answer, and before the Parties have examined Witnesses, the Plaintiff may generally of Course, on Motion, have Leave to dismiss his own Bill with Costs: But after Witnesses examined, it is not to be prayed except it be upon special Cause shewn, 1 *Chan. Cas.* 40.

Not after Witnesses examined:

Also after a Decree to account, and the Plaintiff to pay, &c. or such like, the Court will not suffer him to dismiss his own Bill. *Ibid.*

Or a Decree to account, &c.

A Dismission is not to be mov'd for by the Defendant upon the Matter of the Plaintiff's Bill, before a Demurrer, Plea, or Answer, be put in thereto by the Defendant.

Not till after Plea, Answer or Demurrer.

If

Plaintiff disavows.

If the Plaintiff disavows or disowns the Suit, the Bill shall be dismiss'd without Costs against him upon Notice of the Motion to the Defendant, if he shew no Cause to the contrary.

Dismission thereupon, how made.

The Plaintiff may either come into Court, and disavow the Suit, or by Warrant to Counsel under Hand and Seal, disown and disclaim it, as being brought without his Order or Privy, or against his Order, tho' with his Privy; and may empower some Counsel to move and consent that the Bill be dismiss'd.

By Warrant filed in Court.

And in case such Warrant, the Court orders it to be filed in Court; and in such Cases, if there be more Plaintiffs than one, the Bill will be dismiss'd only as to him, who disavows the Suit.

The Abuse punish'd if dismiss without Privy. Costs at Law, and in Equity.

If without the Plaintiffs Privy a Bill be dismiss'd as of his own Prayer, &c. The Court on Complaint, &c. will not only retain the Bill, but will order the Abuse to be examined into, and punish it.

When, by Order of this Court, Proceedings are had at Law as to try an Issue, or the like, the Party shall have his Costs at Law allowed, as well as his Costs in this Court.

Costs at Law, refused.

But upon Dismission of a Bill here, whilst the Defendant prosecuted at Law upon a Bond, this Court refused to give him his Costs at Law, because he should recover them there.

Full Costs tax'd, &c. Subpæna thereupon.

'Tis said, upon a Dismission with full Costs, you are to get them tax'd by a Master, to whom the Taxation is referred, and to have his Report therein; and then without Confirmation of his Report, you have a *Subpæna* for them, upon which, if they be not paid, you then have Process of Contempt, as in other Cases.

No Retainer till Certificate of Costs paid.

Where a Bill is regularly dismiss'd of Course, or by Order, for Want of Prosecution, no Motion will be admitted for retaining it without a Certificate from the Defendant's Clerk in Court, That the Costs of the Dismission are paid, to the End unnecessary Charges to the Parties, by several Motions for one and the same Matter, may be avoided. *Ord, Chan. 144.*

Retainer on paying Costs at Law, &c.

But though a Bill be dismiss'd, for that the Plaintiff also proceeds at Law; yet if afterwards he choose to proceed here, and apply himself in Time, and it be a Matter

Matter properly cognizable here, the Court will ordinarily, upon paying the Defendant his Costs at Law, and of the Dismission here, retain his Bill.

'Tis said, No Dismission, or Retainer after a Dismission, will be granted upon a bare Petition only; i. e. without Motion; and in the Case of Retainers, a Certificate of Costs paid, *ut supra*.

Not on Petition only.

A Cause may be dismiss'd, for *Vexation*, by reason of a double Proceeding; as if the Complainant first brings an Action at Law, and then his Bill here for the same Thing: (in Effect) He has Election either to proceed here, (his Proceedings at Law not being stay'd by Order or Injunction) or to go on at Law, and be dismiss'd here, (with Costs to the Defendant:) But he will not be suffered to proceed in both, if the Defendant move the Court herein.

Causes of Dismission, *vide supra*.

Vexation.

But though the Bill be so dismiss'd, yet he may afterwards get it retain'd here on his Paying Costs, &c. *ut supra*.

If the Plaintiff *Pendente lite*, in this Court enters into the Lands in Question, or does any such like Thing, he shall be dismiss'd for so much, because he thereby in some sort takes upon himself to be Judge in his own Cause, and renounces the Judgment of the Court: But for the other Matters in his Bill, (if any) he may proceed.

Judge in his own Cause.

A School-master was dismiss'd, who sued here for his Salary, &c. because he could not make out that he was duly chosen, &c. as a Trust directed: But in Regard, that under the Notion and Supposition of his being Master of the Charity-School, he had taught four Years *gratis*, near the Place, where the other Master taught, and so might be suppos'd to ease him, and that the Plaintiff had also lately been in Prison, and was poor, the Court spared Costs against him: But said, If he came again by Rehearing, &c. he should *smart*.

A School-master dismiss'd, because not duly chosen.

Costs spared.

A Bill was to be relieved against an Action for Rent; and at the Hearing of the Cause, it was decreed to account, and that the Plaintiff should pay what was due to the Defendant on Account; and the Account was stated by a Master: Then the Plaintiff moved to dismiss his Bill, paying what Costs the Court would assess. Which was oppos'd; for that the Judgment of the

After a Decree, the Plaintiff may not dismiss his Bill.

the Court being given, the Plaintiff ought not to abuse the Court, and depart from it. And though it was insisted, That *quilibet potest renunciare Juri per se introducto*, that Rule was denied in this Case, as it had been in other Cases. *Vide 1 Chan. Caf. 40. inter Gallbert and Hawles, Hill. 14 Car. 2.*

Certiorari Bill to remove a Cause, dismiss'd.

A *Certiorari* Bill was brought in *Chancery* to remove a Cause out of the Mayor's Court, his Witnesses being out of the Jurisdiction: And the Bill being for an Account here also touching other Matters, a *Procedendo* was denied; and after Hearing, the Cause was dismiss'd out of this Court. *1 Chan. Caf. 31. inter Rich and Jaquis.*

Bill dismiss'd by Sentence given in Denmark.

A Bill was dismiss'd in regard a Sentence was given against the Plaintiff in the Court of *Denmark* upon a Seizure, &c. *1 Chan. Caf. 237. inter Bluet and Bampfild, &c. Mich. 26 Car. 2.*

Dismission pleaded to a new Bill.

In case of any Dismission, which was not upon Hearing of the Cause; if any new Bill be irregularly brought, the Dismission is to be pleaded: And after Reference and Report of the Contents of both Suits, and Consideration of the Cause of the former Dismission, the Court is to rule and order the Retaining or Dismission of the new Bill, according to Justice, and the Nature of the Case.

Dismissions had on Motion. &c. at the Hearing.

Dismissions are generally pray'd and procur'd upon Motion, and had upon Plea or Demurrer to the Bill, or on the Merits of the Cause at the Hearing; and not after Examination of Witnesses before the Hearing: But upon a Discontinue of Prosecution by Motion, and Order of Court, they may.

Discontinuance of Prosecution.

Where the Plaintiff discontinues his Prosecution after all the Defendants have answered above the Space of three Terms, the Cause is to be dismiss'd of course after Rules given for that Purpose: But after a Replication put in, it cannot be dismiss'd (of Course) without an Order upon Motion.

Upon a full Hearing.

Where a Cause is dismiss'd upon a full Hearing recorded, and certified by the Lord Chancellor, it cannot be again retain'd, or a new Bill admitted, but where there is new Matter, of which Affidavit must be made.

New Matter.

Where

Where the Bill is newly dismiss'd of Course or by Order, no Motion will be heard to retain it, until the Costs assessed upon the Dismission be paid, and certified from the Attorney on the other side, that it is done.

No Motion for Claimer till Costs paid.

But touching the Causes of Dismission or Retainer, this Court exercises a discretionary Power therein, and will retain or dismiss it, as they see Cause. See Cary's Rep. 34, 43, 74, 76, 110, &c.

Discretionary Power of the Court.

Touching Decrees, observe.

A Decree is a final Sentence or Order of Court determining the Right of Matters in Question, according to Equity, and ordering the Parties accordingly, and is pronounced by the Lord Chancellor or Keeper, or Master of the Rolls, of which Notes or Minutes being taken by the the Register, it is afterwards drawn up in Form in *English*, and afterwards signed and enrolled in *Latin*.

A Decree defined.

How made, signed and enrolled.

And until such Decretal, Order or Decree is so drawn up and signed and enrolled as aforesaid, it has only the Force of an Interlocutory Order, and is not final, but may be altered upon a *Rehearing* or sometimes upon a Motion.

Not final till signed and enrolled.

But the *Orders in Chan.* p. 213. Minutes of Decrees and Orders pronounced in Court are to be read there, that all may take Notice and speak to the testifying of them, if there be Occasion; and no Petition or Motion is afterwards to be made of any Orders not agreeing with the Minutes, unless the Minutes have been altered after reading them, or the Register shall without Consent not pursue them.

Minutes thereof to be read, &c.

No Decree or Dismission shall be presented to the Lord Chancellor or Master of the Rolls to be signed, till it be signed by the Six Clerk in the Cause, or his Deputy; and no Decree, &c. is to be signed by the Register without the Six Clerk's Hand thereto. *Vide Ord. Chan.* 56, 143.

To be signed by the Six Clerk and Chancellor,

And if any Decree, Dismission or Injunction be made or granted by any of the Judges sitting in *Chancery*, it must be signed by them, or such of them, as shall make or grant the same, and after by the Lord Chancellor

Or Judge, &c. and Chancellor before entred.

before

No Decrees, Dismissions or other Records, to be carried by the Under-Clerks to their Chambers, or out of the Office, &c.

Records, &c. to be delivered to the proper Clerk within one Term after the Cause determined, &c.

Parchment allowed for the Inrolling. Decree signed.

When signed by the Master of the Rolls, and Lord Chancellor before Inrollment.

Decrees and Dismissions how drawn up and signed and enrolled.

before it be entred with the Register. *Vide Ord. Chan.* 48, 56.

No Bills, Privy Seals, Commissions, &c. Decrees, Dismissions, Injunctions or Records whatsoever, shall from hence forth be carried to be engrossed, enrolled, copied or otherwise used by any of the Under-Clerks to their Chambers, or elsewhere out of the Six Clerks Office or Lodgings there. And when, and so soon any Clerk shall have engrossed, enrolled, copied or used any such Warrants, Pleadings, Commissions, Decrees, Dismissions, or other Record in the said Office, he shall bring the Original thereof presently back to his Master, or to such of the Six Clerk, to whom the Custody of the same doth or shall belong, for the more safe keeping or disposing thereof. *Ord. Chan.* 55.

And that within one Term after any Cause shall be determined by Decree or Dismission, every Clerk that shall have any Decree or Dismission, or any other Record touching the Cause in his Custody, shall deliver the same to that Six Clerk, to whom it shall belong to keep the same, or to such his Deputy as aforelaid, according to the ancient Usage.

But by an Order of the 5th of January 1635. which fee in the *Orders of Chan.* pag. 23. the Under-Clerks may bring over from the Six Clerk's Office to the Chapel of the Rolls any Decree or Dismission, after the same are signed to be seen by the Usher of the Court, or his Deputy only, that so he may judge what Parchment is necessary to be allowed for the inrolling thereof.

And, note, every Decree, &c. must before Inrollment, be signed as aforelaid.

Decrees and Dismissions made or granted at the Rolls, or at *Westminster*, on such Days as the Lord Chancellor is not present, being drawn up, are first to be signed by the Master of the Rolls, or the Judge, that sate at the Hearing of the Cause, and then presented to the Lord Chancellor to be by him likewise signed; which done they may be enrolled.

And by the Orders in Chancery, pag. 142, 143. That all Decrees and Dismissions pronounced upon Hearing the Cause in this Court be drawn up, signed and inrolled before the first Day after the next *Michaelmas* or *Easter* Term, after the same shall be so

pro-

pronounced respectively, and not at any Time after, without special Leave of the Court.

When the Party is committed, or brought in by a Serjeant at Arms for a Breach of a Decree, he is not to be enlarged, until he hath performed the Decree in all Things, that are to be presently done, and given Security by Recognizance with Sureties, as the Court shall order to perform the other Parts of the Decree (if any be to be performed) at future Days and Times appointed by the Decree

No Decree or Dismission shall be presented by the Register of this Court, or his Deputy, or any other, to the Lord Chancellor, Lord Keeper, or Master of the Rolls, to be signed, before it be signed by that Six Clerk, to whom it belongeth, of his proper Hand-writing, or by his Deputy in his Absence.

To the Intent the Decrees and Dismissions of this Court may be easily found upon Search, the Six Clerks are to keep a publick Book for the entring all Decrees and Dismissions, which have been made and signed by the Lord Chancellor since the Nine and Twentieth day of *May* last, and which shall be made and so signed in this Court: And to that End the Register shall at the Beginning of every Term deliver to one of the Six Clerks a List of all the Decrees and Dismissions signed by the Lord Chancellor the Term and Vacation before. *Vide Ord. Chan. 143.*

And all Decrees and Dismission ought to be drawn up as short as may be with Convenience, and not to recite the Pleadings largely, but (only) the Sum of them briefly.

And the Registers are to be careful in the penning and drawing up of Decrees, and especially in Matters of Difficulty and Weight.

And therefore by ancient Order, when the Registers are to present any Decrees to the Lord Chancellor to be signed by him, they ought to acquaint him which are Decrees of Weight, that so they may be read and reviewed before his Lordship sign them.

The Decree or Decretal Order being drawn up in Form by one of the Registers, according to the Minutes, and the Pleadings and Proceedings in the Cause, (*Vid. the Directions postea 359.*) and afterwards signed

A Party committed for Breach of a Decree, not to be enlarged till he hath performed it, or given Security.

No Decree or Dismission to be signed by the Six Clerk before it shall be presented by the Register.

The 6 Clerks to keep a publick Book for the entring of Decrees and Dismissions.

Decrees, &c. to be drawn up briefly.

Registers to be careful in penning of Decrees.

Register to inform the Chancellor of Decrees of Weight.

Decree sign'd and inrolled, not to be altered, &c. upon Motion as or Order.

as aforesaid, and enrolled of Record, may not be reversed, altered, or explained upon any Motion, or by any Order.

But by Bill
of Review.

But the Party, if he has good Cause, is put to his Bill of Review, which is not admitted but by special Order upon good Cause shewn; it being convenient both with respect to the Dignity of the Court, and the Ease and Benefit of the Parties, *ut sit Finis Litem.*

Except in
Case of
Counting.

Though after Inrollment a Decree cannot ordinarily be altered, but by Bill of Review, yet in case of Miscasting or Miscounting, where the Matters demonstratively appear from the Decree it self to be mistaken, it may be explained and reconciled by Order.

Not of Mis-
valuing.

Where it is to be noted, that by *Miscasting* is not to be understood a Misvaluing, but only a Mistake in the Auditing or Numbring.

Matters of
Account exa-
mined after
pronounced.

After a decretal Order is *pronounced*, a Matter of Account and such like, which are necessary to perfect the Decree, may be, and commonly are examined and settled before a Master; but nothing can be examin'd, &c. which is against the Foundation of the Decree.

Accounts in-
ter al' after
Inrollment.

And 'tis said, If an Account be decreed, and then the Decree is inrolled, and then the Report of the Account is confirm'd, there ought in Strictness to be a second Inrollment of the whole Report.

Inrollment
dispensed
with.

But on Petition this is often dispensed with, and the Plaintiff is allowed to take out a Writ of Execution of the whole, without such second Indictment.

Decree for
the Defen-
dant.

A Decree is sometimes made for the Defendant, when the Equity appears to be with him; and this is better than to admit a cross Bill to be put in by him, and going to new Proofs after Publication in the first Cause.

A Decree not
to be explain-
ed by origi-
nal Bill,
Nor by a Pe-
tition.

An Original Bill is not to be admitted to explain a Decree upon a Fact precedent. 1 *Chan. Cases* 45.

Nor can a Decree be crossed, altered or explained upon a bare Petition only, but it may be thereby stayed a while, till it can be moved in Court. *Idem.*

One Defendant pleaded Outlawry in the Plaintiff, and another Defendant answered, and a Decree was against him; afterwards the Defendant, who pleaded the Outlawry, brings an Original Bill to set aside this Decree; and it was done, he having a Title paramount to the former Plaintiffs. 1 *Chan. Cases* 3.

Original Bill where 2 Defendants and a Decree against one.

Where a Decree is Temporary, or for special Ends, an Original Bill lies to shew that the Purposes of the Decree are satisfied, and to put a Period to it. 1 *Chan. Cases* 251.

Original Bill lies on a Temporary Decree, &c.

Where after a Decree an Original Bill is become necessary, as in case the Decree be of 23 or 30 Years standing, or that the Party neglecting to procure a Stay of Proceedings at Law, is ousted of his Possession by Judgment there, in such case, the former Decree may be set forth as Evidence: But the Court will not Decree the same Thing merely upon the Foot of that Decree, but will examine the Grounds and Reasons of that Decree, ere they make a new one. 2 *Chan. Rep.* 128.

Where on Original Bill necessary after a Decree, such Decree may be set forth as Evidence.

All Original Parties to the Suit, or those that are made Parties thereto by Process, &c. or to the Decree, being of full Age, *Compos Mentis*, &c. and such a claim under them, *pendente Lite*, are regularly bound by the Decree.

Whom, and in what Cases a Decree shall bind.

But any that *bona fide* came to be interested in the Matter in Question by Conveyance from the Defendant before the Bill exhibited, and is not made a Party to the Suit, either by the Bill or by Order, is not bound.

Or not.

And therefore Purchasers, that come in *bona fide* by Conveyance, before the Bill exhibited, and are no Parties either by the Bill or by Order, are not bound by the Decree.

Where one comes in, *pendente lite*, and while the Suit is in full Prosecution, though without any Colour of Allowance, or Privity of the Court, there regularly the Decree bindeth.

Vide post 357.

But if there were any Intermission of the Suit, or the Court were made acquainted with the Conveyance, there the Court will give order upon the special Matter according to Justice and Equity.

Parties not served with Process *ad audiendum Judicium* are not bound by the Decree, unless they appear *gratis* at the Hearing.

Not the legal Interest of the Estate, but the Person. And the Possession.

A Decree does not *bind* (or rather *alter*) the legal Interest of the Estate, &c. but it binds the Person, who may by Decree be ordered to convey and assure the Interest; and if he refuses to obey the Decree, the Court will imprison him, until he conform.

And it so far affects the Right or Title both to Lands and Goods, that the Court by Sequestration and Injunction doth dispose of the Possession to such Party, whose Right in Conscience it has judged the same to be.

Decrees not to make void or weaken Judgments at Law. *Quere.*

Decrees upon Suits brought after Judgment shall contain no Words to make void or weaken the Judgment, but shall only correct the corrupt Conscience of the Party, and rate him to make Restitution, or to perform other Acts according to the Equity of the Case.

When to be entred in the Register's Docquet-Book.

'Tis said, Where a Decree concerns Lands, even so low as Leases or Terms for Years, it must be entred in the Register's Docquet-Book within six Months after it is pronounced, or else it shall not prejudice Purchasers.

And 'tis said, He that purchaseth after a Bill exhibited here against the Vendor, doth it at his own Peril. 2 *Chan. Cases* 223.

Decree to foreclose, Time enlarged for Payment, &c.

When a Decree is to foreclose, the Court will in Cases of Necessity, enlarge the Time for the Performance thereof in Payment of the Money. though the Decree be signed and enrolled. 1 *Chan. Cas.* 64.

And it was said in Court, If after a Decree of Foreclose, the Party (neglecting the Execution thereof) has Recourse to the Defendant's Person, it opens the Decree again. But the Master of the Rolls seemed to think it might be done with Leave of the Court, without producing that Effect.

Decree not to be against the express Words of an Act of Parliament, Except a general Construction has been concordant.

No Decree is ordinarily to be made upon Pretence of Equity against the express Provision of an Act of Parliament.

But if the general Construction of an Act hath for a Time gone one Way, which afterwards by a later Judgment hath been controlled, there Relief has been given upon Matter of Equity arising before such later Judgment has been concordant.

Judg.

Judgments, because the Subject was in no Default.

Matters assigned for Error in a Decree, must appear in the Decree itself; for being of Record, must be tried by it. *1 Chan. Cas. 54, int. Combs & Proud. Vide Possea Bills of Review.*

If Matter of Fact be mistaken at the Hearing and decretal Order, that must be rectified by Rehearing and not otherwise. *Ibid.*

Vide 1 Chan. Cases 63. where the Court was fully satisfied, That a former Decree made on the Behalf of a Mortgager, was only in the Nature of a Mortgage, and but a Security for the Money, although the same was made absolute.

In the Cause, *Style against Martin*, *1 Chan. Cas. 152.* Lord Keeper said, a Stranger may falsifie at the Common Law, and if a Decree be by Fraud, the Plaintiff may then be admitted to falsifie an Agreement; but 'tis not Form, but the Substance of a Decree, that all be bound that come in *pendente Lite*.

Note, Upon a Decree for Alimony *quousque Habitation*, and the Husband exhibited a Bill and offered to cohabit. 'Tis said, the Court cannot in this Case discharge Arrears, and that no Alimony can be decreed but by Consent, unless there was first a Decree for Separation. *1 Chan. Cas. inter Whorewood & Whorehood, 250, 351.*

And in this Case it was said, That the Assurances made upon the Decree, though they were absolute, were to be guided by the Decree, that directed them.

In a Cause, *Mich 27 Car 2.* it was decreed, That a Trial should be refer'd to Law, and that the Defendant should not insist on a Title set aside by the Decree. *1 Chan. Cas. 267. Anonymus.*

But at a Trial in the *Common Pleas*, the Defendant's Council (not being inform'd before of the Decree) insisted, That the Decree was void. Whereupon the Plaintiff read the Decree, and the Plaintiff was nonsuited, and then moved the Court of *Chancery* for a Commitment of the Defendant, and Establishment of the Possession, which was ordered *nisi Causa*, and the Cause being shewn, that the Trial was voluntary, &c. the Lord Keeper said, You labour to get an Appeal

Errors assigned must appear in the Decree.

Matters to be rectified by Rehearing.

A Decree in Nature of a Mortgage.

Where a stranger may falsifie. All that come in *pendente Lite*, are bound by a Decree.

Upon a Decree for Alimony *quousq;*

Absolute Conveyances guided by the Decree that directed them.

Decreed, that at a Trial at Law, Defendant should not insist on a Title set aside by the Decree.

Ordered, Defendant should be committed.

Decree con-
tested by one,
neither Party
nor Privy.

to the King, and so to delay, let the Order stand. Where a Parish was sued, Four moved to defend, and a Decree against them; one who claimed under none of the Four, contests the Decree, and 'twas said, That though he was no Party nor Privy, yet he may have a Bill of Review, because he was griev'd by the Decree. 1 Chan. Cases, 272. *Brown against Vermuden.*

Where the
Benefit of a
Decree was
signed and
defeasanced.

In a Suit by *Barns* against *Cunning* and *Piggot*, whereby it appear'd the Benefit of a Decree was assign'd and defeasanced for Payment of Money: The Chancellor disliked the Purchasing of Decrees, and said, He was mad, that would do it. Yet if the Plaintiff had it, he would not avoid it, but made the Question to be, Whether that the Assignment of a Decree was not a collateral and supplemental Security, and not an original Security, and so took it to be. 1 Chan. Cas. 300, 301.

Decree en-
rolled post
mortem.

Mr. Attorney moved, That a Decree pronounced in *Michaelmas-Term*, that the Defendant should account; since which the Defendant was dead, might be enrolled. Lord Chancellor said, What good will that do you, when 'tis but to account. Mr. Attorney said, the Decree was not only to account, but for Payment of certain Sums. Lord Chancellor reply'd, It hath been done, and is so at Law; If Judgment is pronounced, it shall be entred, though the Party die; let it be so now. 2 Chan. Cas. 227. *Anonymus.*

Aliter in the
Case of an
Administra-
tor.

But it was ordered otherwise in the Case of an Administrator of a Mortgager; where upon an Account the Master certified the Mortgagee over-paid 280 l. which was now due to *Thomas* the Administrator, and which he offered to acquit upon an Assignment of the Term to him, his Executors and Administrators, which was decreed by Consent before Inrollment. *Thomas* dieth, and his Wife took Administration to him, and then it was moved that the Decree might be inrolled, but it was opposed, because *Thomas* had Right but as Administrator to *George*, which the Wife of *Thomas* cannot have as Administratrix to *Thomas*; and the Lord Chancellor denied the Inrollment, for that the Title of *Thomas* as Administrator is gone, &c. 2 Chan. Cas. 248.

In

In the Case, *Nanny* against *Martin*, 1 *Chan. Caf.* 27. Decree made for Baron and Feme have a Decree for Money in Right of the Feme, and the Baron dies, the Wife, and not the Executor of the Husband, shall have the Benefit thereof. Decree made for Baron and Feme, and Baron dies.

That Bar by verbal Agreement is no Stay to the Execution of a Decree. 2 *Chan. Caf. inter Wakelin & Walthall*, Mich. 31 Car. 2. Bar by verbal Agreement no Stay.

That no Decree can be made against a Man's Answer upon the Proof of one Witness, in the Earl of Bath and Mountague's Case. 3 *Chan. Caf.* 123. Where no Decree if but one Witness.

Directions for drawing Decrees.

Though Decrees in Equity are to be enrolled in Latin, yet they are first to be drawn up in *English*; and in drawing up the same, the following Directions may be observ'd, wherein reciting the Bill, Answer, &c. briefly, you begin thus, viz. Directions for drawing a Decree.

Inter A. B. &c. Quer, & C. D. & al' Defendentes.

Whereas heretofore (that is to say) in the Term of *St. Hillary* in the Year, &c. *A. B.* and *T. B.* Gentlemen, Complainants, did exhibit their Bill of Complaint into this High and Honourable Court of Chancery against *C. D.* and others, Defendants, thereby setting forth, That, &c. (reciting the Bill briefly.) Bill recited.

And note, both Plaintiffs and Defendants must have the same Titles in the Decrees, as they have in the Bill; as if the Plaintiff was Executor or Administrator, the Decree must be accordingly, viz. *As Executor of the last Will and Testament of D. E.* or, *Administrator of the Goods and Chattels, Rights and Credits of D. E. &c.* or otherwise, as the Case is. Note.

The Substance of the Bill being recited, say, For Remedy whereof, or for Relief wherein, and to have a Discovery of, &c. (*set out of what*). The Complainant humbly prayed the Aid and Assistance of this Honourable Court, and Process of *Subpoena* to be awarded against the said Defendants to appear in this Court and answer the Premises. Which being granted, and the Prayer of Relief.

Answer recited.

Infant's Answer.

Replication, Rejoinder.

Depositions.

Cross Bill &c. *vide infra*, Orders of Court.

Hearing of the Cause.

Decree.

Report.

Defendants therewith served, they appeared accordingly, and answered the said Bill, &c. (reciting the Substance of the Answer, as to what is thereby confessed, avoided, or denied.)

And if the Defendant be a Minor, say, The said Defendant being a *Minor*, answered by his Guardian in that Behalf assigned, and thereby *confessed or denied, &c. (as the Case is)* which Answer being recited, if there be more Defendants, then say, And the said Defendant *T. B.* by his Answer to the said Bill, said, &c. (*Setting forth the Substance of all the Answers.*)

To which said Answer (or Answers) the Complainant replied, and the Defendants rejoined, and so the Parties being at Issue, divers Witnesses were examined in the Cause, and their Depositions duly taken and published according to the usual Course of this Court. (*And if there were cross Causes, and therein such Order made, say, And by an Order of this Court of the Day of last, the Depositions taken in this Cause, wherein the now Defendant C. D. was Complainant, were to be read at the Hearing of this Cause, &c. (and so recite the other necessary Orders, if any)* as by the said Bills, Answers, Replications, Depositions of Witnesses and other Proceedings remaining upon Record in this honourable Court, may more at large appear: And this Cause so standing in this Court the Day of last past, was by this Court appointed for the Hearing thereof; on which Day the same coming on to be heard and debated accordingly in the Presence of Council learned on both Sides, the Substance of the Complainant's Bill, and the Defendants Answers (and of the cross Bill, &c.) appeared to be as the same are herein before recited and set forth: *Whereupon*, and upon Debate of the whole Matter, and hearing what could be alledged on all Sides, this Court did think fit, and doth accordingly order and decree, That, &c.

But if a Master has made a Report in the Cause, then in its proper Place say, In Pursuance of which Order the said Sir R. H. one of the Masters of this Court, made his Report unto this Court, in the Words following, *viz. Dat' 31 Maj, 1713, inter A. B. &c.* reciting

reciting the Report *verbatim*. And if there be a Motion to confirm the Report, then say thus: And afterwards upon Motion of the Defendant's (or Plaintiff's) Counsel the 20th of June last past, and upon producing of the said Report, it was ordered, &c. (*setting forth the Order thereupon.*)

And if the Plaintiff or Defendant were to shew Cause why a Report should not be confirmed, and doth not, then, in setting out the Order for Inconformity, if the Decree be grounded thereon, say, And now upon opening the Matter this present Day unto this Court by the Defendant C. D's (or the Plaintiff A. B's) Counsel, forasmuch as the said Complainant (or Defendant) had due Notice of the said last mentioned Order, as by Affidavit appeared, but had shewed no Cause to the contrary thereof, as by the Register's Certificate appears, it is therefore this present Day, being *Thursday* the Day of --- in the Twelfth Year of the Reign of, &c. by the Right Honourable the Lord Chancellor of Great Britain, and by the Authority of this high and honourable Court of Chancery, ordered, adjudged, and decreed, That the said Order of, &c. last do stand absolutely confirmed, and that accordingly the said Report do stand ratified and confirmed by this present Decree, to be observed and performed by all Parties according to the true Meaning thereof.

If a cross Bill be to be recited, then thus, And whereas afterwards, that is to say, in Trinity Term last, the said C. D. did exhibit his cross Bill of Complaint into this high and honourable Court of Chancery against the said A. B. setting forth, &c. (*promt the cross Bill briefly:*) At the End of which say, And to that End the said C. D. by his said cross Bill humbly prayed the Aid and Assistance of this Court, and that for that Purpose, Process of Subpœna might be awarded against the said A. B. &c. therein named Defendants, to appear in this Court, and to answer the Premises, &c.

If a Cause be heard upon a Bill and Answer only, and a Decree is made upon the Order for such Hearing, then after you have set out the Bill and Answer in the Decree, say, As by the said Bill and Answer remaining upon Record in this honourable Court may more at large appear: And the Cause so standing upon the said Bill and

Motion to confirm it.

Order thereon.

No Cause shewn.

A Decree thereupon.

Cross Bill recited.

Decree on the Order of Hearing upon Bill and Answer only.

and Answer the --- Day of --- in the thirteenth Year of the Reign, &c. was by this Court appointed for the Hearing thereof, on which Day the same coming to be heard accordingly upon the said Bill and Answers, in the Presence of Counsel learned on both Sides, the Substance of the Complainant's Bill, and the Defendant's Answer, appeared to be as the same are herein before recited and set forth; whereupon, and upon Debate of the Matter, and hearing what could be alledged on both Sides, and upon reading the Will of E. F. &c. in the said Answer mentioned, (if such Will, &c. be read) this Court doth think fit, and accordingly it is this present Day, that is to say, on Thursday the --- Day of --- in the said thirteenth Year, &c. by the Right Honourable the Lord High Chancellor of Great Britain, ordered, adjudged, and decreed, That, &c.

Upon a Re-hearing.

If a Rehearing be, and the former Order on hearing confirmed, then reciting the former Order, say, Whereupon, and upon Debate of the Matter, and hearing what could be alledged by the Counsel on either Side, this Court did declare, That the Decree formerly pronounced in this Cause was just, and did accordingly order, That the same should stand.

Upon an Order on a Petition for a Rehearing.

And if it be on a Petition upon the Order on Hearing, then reciting the Order on Hearing, say thus, With which said Order the said Defendants being dissatisfied, they petitioned his Lordship for a Rehearing of the said Cause, and to have the Order rectified in several Particulars, and thereupon, by an Order of the --- Day of --- it was ordered, That the said Cause shall be set down to be reheard the --- Day of --- on Peril of double Costs; and the same coming on to be reheard accordingly in the Presence of the Counsel learned on both Sides, the Counsel for the Defendants insisted, &c. (setting forth the Substance of their Arguments;) whereto the Counsel for the Plaintiff replied, &c. (setting out the Substance thereof likewise;) whereupon this Court did declare, &c.

The Form of a Decree, Viz.

WHereas heretofore, that is to say, in our Court, about the Term of - - - which was in the Year of our Lord God, according to the Computation of the Church of England, 1709 *J. W. Junior*, and *E.* his Wife, and *H. H.* an Infant, by his Guardian, Complainants, exhibited their Bill of Complaint into this high and honourable Court of *Chancery* against *W. H.* an Infant, *J. W. Senior*, and *R. F.* Defendants, thereby setting forth, That *J. H.* Father of the Complainants *E.* and *H.* being seised of divers Lands and Tenements lying in *S. G.* in the Parish of *H.* in the County of *W.* of the Value of 200 *l. per Annum*, did for Provisions and Portions for his younger Children, make a Lease thereof to *D. B.* the Defendant *J. W.* the Elder, and one *W. C.* for a long Term of Years, in Trust, for raising 500 *l.* apiece for the Complainants *E.* and *H.* his Children, viz. 500 *l.* for the Complainant *E.* payable at her Age of twenty-one Years, or Day of Marriage, and 500 *l.* for the Complainant *H.* at his Age of twenty-one Years, and Interest for their Maintenance till their Portions should become payable, and that the said *J. H.* died, and the said *D. B.* did for some Time act in the said Trust, and afterwards assigned his Interest in the Premises unto *R. F.* and that *W. C.* being dead, so that the Estate in Law was in the Defendants *W.* and *F.* in Trust, as aforesaid, and that *R. H.* the eldest Son of the said *J.* being dead, and the Defendant *W. H.* being the next Heir, the said *W.* by Combination with the other Defendants, the Trustees endeavoured to defeat the said Deed of Trust, and to hinder the Complainants of their Portions and Maintenance, and they refused to pay the said Complainant *E.*'s Portion, which was due upon her Marriage, and Interest for the same, and refused also to allow the Complainant *H.* any Thing for his Maintenance and Education. Therefore that the Defendants might answer, and that the Trustees might discover and set forth the Deed of Trust, and the Date and Contents thereof, and might join in Execution of the Trust, and to be relieved in the Premises,

A Precedent or Form of a Decree, whereby Trustees are enabled to demise or mortgage Lands for raising Monies to pay younger Children's Portions, for such a Number of Years, as the Master shall approve of, with a Recital of the Master's Report, and a Confirmation thereof by the Court.

Bill recited.

Prayer.

Appearance.

Answer.

Confess the Trust, &c.

Premisses, they the said Complainants humbly prayed the Aid and Assistance of this Honourable Court, and that Process of *Subpœna* might be thereout awarded against the said Defendants, to compel them to appear and answer the said Bill, which being granted, and the Defendant therewith served, they accordingly appeared, and answered, the Defendant the Infant answering by his Guardian especially assigned him by this Court. And the Defendants *W. H.* and *R. F.* by their Answer confessed, That the said *J. H.* by his Indenture dated, &c. did demise to the said *D. B.* the other Defendant *J. W.* and *W. C.* a Messuage, and several Closes and Lands, in the said Deed particularly mentioned, of the yearly Value of about 140*l.* To have and to hold the said Lessees, and their Assigns, from the Feast-day of, &c. next before the Date of the said Indenture, for the Term of five hundred Years upon Trust, that the said Trustees, their Executors and Assigns, should handsomely and decently educate and breed up the Defendant *W. H.* and the Complainants *E.* and *H.* with such convenient Schooling, and Trade or Trades, or otherwise, as by the said Trustees should be thought fit and convenient, and over and above what Sum or Sums of Money should be expended about the educating and bringing up the said Children, should out of the Rents and Profits of the Premisses, or otherwise by letting or demising of the same to any Person or Persons, for any Part or Parcel of the said Term for Fine or Fines, with Reservation only of a Pepper-Corn, or other small Rent, raise and pay unto the said *W. H.* and *H. H.* for their Portions the Sum of five hundred Pound apiece, when they should severally attain their several Ages of 21 Years, and unto the Complainant *E.* the like Sum of five hundred Pound for her Portion, when she should attain the Age of twenty-one Years, or at her Day of Marriage, which should first happen; as by the said Indenture, in the Custody of the Defendant *F.* might appear; and that *W. C.* died soon after the making of the said Deed, and that the other Defendant *W.* had not intermeddled with the said Trust, but that the said *D. B.* entred on the Trust-Lands in the Life-time of the said *R. H.* eldest Son and Heir of

of the said *J.* and did for some time maintain the younger Children, but he being an ill Husband, and becoming insolvent, the Defendant *W. H.* was desirous to have the Trust assigned by the said *B.* to the Defendant *F.* which *B.* had done by Indenture dated the Day of then last past, which was in his the said *F.*'s Custody. And the Defendant *F.* said, That he had been at great Charges and Expences in maintaining the Defendant *W. H.* and in soliciting divers Suits for him, and in procuring the said *D. B.* to surrender, and in Journies, and taking Possession and otherwise, an Account whereof he had annexed to his Answer, and prayed, That it might be taken as Part thereof, and said, he was willing to join with the other Defendant *W.* in Execution of the said Trust, so that he might be indemnified by the Aid of this Court. And the Defendant *W. H.* being then near 19 Years of Age, submitted himself to the Discretion of the Court. And the Defendant *W.* by his Answer confessed he was made a Trustee by the Indenture before set forth, but that he never acted in the said Trust, nevertheless he was ready to do any Act, that this Court should think safe for him to do about the Performance of the said Trust; and all the said Defendants denied Combination, and concluded their said Answers with the general Traverse, as by the said Bill and Answers remaining filed, and of Record in this Honourable Court, Relation being thereunto had may more fully and at large appear. And the said Cause thus standing in Court upon Bill and Answer ready for Hearing, a Day, *viz.* the 10th Day of *December*, in the 10th Year of the Reign of Her present Majesty Queen *Anne*, was by this Court appointed for the Hearing thereof, on which Day the same coming on accordingly to be heard in the Presence of Council learned on both Sides, the Substance of the Complainant's Bill, and the Defendants Answers thereunto, appeared to be as is before recited; whereupon, and upon debating the Matter, and hearing what was alledged by the Council on both Sides, this Court did think fit, and so (doth) order and decree, That the said *J. W.* the Elder and *R. F.* should join in the Execution of the Trust, according to the said recited Indenture,

Hearing up-
on Bill, and
Answer.

The Decree.

Reference to
a Master.

Trustees to
raise Money.

The Master's
Report.

denture, and in order thereunto should receive as well the Arrears of Rent, as the growing Rents and Profits of the said demised Premises, and should educate and provide for the Defendant *W. H.* and for the Plaintiff *H. H.* according to the said Indenture of Trust, in such Manner as Mr. *M.* one of the Masters of this Court, should approve of, and should apply the Residue of the said Rents and Profits towards Payment of the said 500 l. due to the Plaintiff *E.* at her Day of Marriage, with Interest for the same after the Rate of 6 l. per. Cent. together with the Costs of this Court, to be taxed by the said Master. And that the same might be the more speedily raised, the said *J. W.* and *R. F.* as soon as conveniently they could, should raise Money, by demising, letting, selling, or mortgaging the Premises, or any Part thereof, to such Person or Persons, for such Part of the said Term of 500 Years, as the said Master shall approve of, and should pay the same to the Complainant *J. W.* the Younger, and *E.* his Wife; and when the said *H. H.* should come to one and twenty Years of Age, the said Defendants *W.* and *E.* were to raise and pay to him his 500 l. out of the Profits of the said Estate, or by leasing or mortgaging the same; and the said Defendants the Trustees were thereby protected and saved harmless by the Aid of this Court, and were to have all just Allowances of Moneys by them or either of them expended, and to be expended, in relation to the said Trust, the same to be allowed by the said Master. Pursuant to which Order the said Master made his Report, and certified the same into this Court in these Words following, viz. *Veneris secundo Die Martii, Millesimo septingentesimo decimo, inter J. W. Junior & E. Uxorem suam, & H. H. per Guardian' Quer' W. H. per Guardian' J. W. Senior, & R. F. Defendentes.* According to an Order of the 10th of December last, in the Presence of the Plaintiffs Solicitor, and the Defendant *F.* I have considered of the Matters thereby to me referred, and do think fit, That the Defendant *F.* be allowed the Sum 40 l. per Ann' for the Maintenance and Education of the Plaintiff *W. H.* and also the Sum of 20 l. per Ann' for the Maintenance and Education of the Plaintiff *H. H.* (according to the Indenture of Trust in the said Order mentioned) out of the

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the

the Rents and Profits of the demised Premises. I have also considered of the Plaintiff's Bill of Costs, amounting to 48 l. 5 s. 6 d. and do think fit to moderate and tax the same at 37 l. 3 s. 4 d. all which I humbly certify, and submit to the grave Judgment of this honourable Court, [E. M.] as by the said Report, remaining filed in this honourable Court, may appear. Now upon Motion this Day made unto this Court by Mr. H. being of the Plaintiff's Counsel, and upon producing of the said Report it was prayed, That the said Report may stand confirmed, which Mr. V. being of the Defendant's Counsel, not opposing, it is therefore this present Day, (that is to say) Monday the fifth Day of March, in the tenth Year of the Reign of our most gracious Sovereign Lady Anne, by the Grace of God, &c. by the Right Honourable William Lord Comper, Baron of, &c. Lord Chancellor of Great Britain, by the said high and honourable Court of Chancery, and the Power and Authority thereof, ordered and decreed, That the said Report, and all the Matters and Things therein contained, do stand ratified and confirmed, by the Order, Authority, and Decree of this Court, to be observed and performed by all Parties according to the Tenour and true Meaning thereof. And it is hereby further ordered and decreed, according to the aforesaid Order of the 10th of September last, That the Defendants J. W. the Elder, and R. F. shall join in the Execution of the said Trust, according to the aforesaid recited Indenture, and in order thereunto, shall receive as well the Arrears of Rents, as the growing Rents and Profits of the said demised Premises, and shall educate and provide for the Defendant W. H. according to the said Indenture of Trust: And that the Defendant F. be allowed the Sum of 40 l. &c. *ut supra*, according to the said Master's Report, and shall apply the Residue of the said Rents, &c. (as in the Decree *supra*) together with the said 37 l. 3 s. 4 d. Costs taxed by the said Master. And that the same may be the more speedily raised, the said J. W. and R. F. as soon as conveniently they can, shall raise Money by demising, letting, &c. *ut supra*. (To be allowed by the said Master.)

[The Master's Name.]

Report confirmed by the Court.

Of

Of the Execution of Decrees, &c.

How to enforce Obedience to Decrees.

IN order to enforce Obedience to a Decree, you are first to get it signed and enrolled as aforesaid, and then to serve the Party, by shewing the Decree it self under the Seal of the Court, and delivering unto him a Copy thereof, and if he yields not Obedience thereunto, but stands obstinate, you proceed to take out all the Processess of Contempt, as Attachment, Proclamation, Commission of Rebellion, Serjeant at Arms, a Writ of Sequestration, &c. as before is shewn, from Page 71. to Page 76. and 84, 85, &c.

Imprisonment till he perform it, &c.

And when the Party is taken upon any of the said Processess, he is to be straitly imprison'd, and not to be set at Liberty till he yield Obedience to the Decree, *i. e.* till he perform that Part thereof which is presently to be done, and give Security to perform that Part which is to be done *in futuro*. *Vide ante* 353.

Fined, and the Fine estreated.

Also it has been practiced, That the Lord Chancellor has fined the Party for his Contempt in disobeying a Decree, and afterwards estreated the same into the *Exchequer*. But this is held to be illegal; nor will the Court of *Exchequer* issue Process upon such Estreats.

On a Decree for Land.

Where the Decree is for Land, and the Party remains obstinate after his Imprisonment, the Court usually grants an Injunction for the Possession thereof to be yielded up to the Party, for whom the Decree was; And if this be disobeyed after it is served, and Oath made thereof, the Court doth in that Case grant a Commission to some Justices of Peace to put the other Party in Possession.

An Injunction for Possession.

A Commission to the Justices.

A Writ of Assistance to the Sheriff.

And if Need be, a Writ of Assistance may be had, which is directed to the Sheriff, and commands him to be aiding and assisting (to the Justices) in putting the Party in Possession.

On a Decree for Payment of Money.

When the Decree is for Payment of a Sum of Money, it must be served, and the Money demanded, by the Plaintiff himself; or else he that serves the Decree must have a Letter of Attorney from the Plaintiff to demand and receive it.

And

And note, a Sequestration is sometimes granted both of the Goods and Profits of the Lands, not only for a Man's Wilfulness in standing in Contempt, as aforesaid, but also where the Decree is for Discharge and Payment of Debts and Duties, and likewise where it is for the Payment of any other Sum of Money.

A Sequestration there-upon, as well as for Lands.

A Writ to execute a Decree made in this Court is in this Form, viz.

Anna, &c. J. B. ac omnibus aliis quibuscunq; aliquod Jus Stat' Titul' Termin' Annor' clamen' Interesse vel Demand' ad vel in quoddam Clausum vel Parcel' Terræ inclus' vocat' &c. ac diversas al' pecias Terræ sive Pasturæ continen' sexagenti' acr' aut id circa, jacen' & existen' in Villis, Campis, & Parochis de M. & R. in Com' S aut ad vel in aliqua inde Parcelle per vel subter te prefat' J. aut per Mandat' vel Procuracionem tuam claman' vel vendican' & vestrum cujuslibet, Salutem. Cum quoddam finale Decret' sive Judicium coram nobis in Cancellariam nostram inter J. W. Militem, Quer' & te prefat' J. B. Def' nuper fact' & reddit' extitit in hac verba: Whereas, &c. (here recite the decretal Order) Tibi igitur prefat' J. B. ac vobis omnibus aliis supradictis firmiter injungendo, precipimus, quod omnia & singula in Judicio sive Decret' predict' content' & specificat' quantum aut quoad vos seu aliquem vestrum in aliquo tangunt seu concernunt fac' & perimpletis, & exequamini, & quilibet vestrum faciat perimplet & exequatur cum effectu indilate, juxta vim, formam & veram intentionem Decreti sive Judicii predict'. Et hoc nullatenus omittas, nec aliquis vestrum omittat, sub Periculo Incumben'. Teste, &c.

Form of a Writ to execute a Decree touching Lands.

Words of Course to introduce a Certificate in a Writ for executing a decretal Order, viz. *Cumq; etiam Registerius dictæ Curie nostræ nobis in Premissis certificavit in hac verba.*

Words of course.

An Injunction for yielding up the Possession
is in this Form, viz.

Injunction
that the De-
fendant shall
depart from
the Premises,
and permit
the Plaintiff
to enter and
enjoy.

*AN*na, &c. C. D. ac cuicunq; al' Persona sive quibuf-
cunq; al' Personis aliquid Jus, Stat' Usus, Interesse,
Possessionem, sive Demand' de vel in Capital' Messuag'
vocat' S. & omnibus Terris eidem pertinen' vel cum eodem
usitat' scituat' jacent' & existen' in B. in Com' nostro de S.
& de & in 40 acr' terra arab' & in quodam finali Ju-
dicio sive Decreto coram nobis in Cur' Canc' n'ra inter A. B.
Quer' & te prefat' C. D. Def' geren' Dat' &c. ac in Bre-
vi de Executione superinde mentionat' & express' aut de
vel in aliqua inde parte sive parcella per vel sub te prefat'
C. D. and if on a Bill of Review, &c. say,) vel per
vel sub prefat' H. D. post Exhibitionem Querimon' dicti
A. B. coram nobis in dicta Cur' Canc' nostrae Term' Sanc'
Trin' (tali Anno) vers' dictum H. D. & al' haben' ullum
Clamen' vel Vendicationem de vel in Premissis pred' &
eorum cuilibet Salutem. Ostens' est nobis in dicta Curia
nostra (tali die) ex parte pred' Quer' quod per Judicium
sive Decretum pred' adjudicat' & decret' sit quod in prefat'
Def' Hered' & Assignat' tui capital' Messuag' & Pre-
missa pred' conveyata sint per te prefat' C. D. ad pred'
A. B. Hered' & Assignat' suos donec & quousq; 1500 l.
in questione sive demand' unacum damag' & costag' provin-
de prefat' Quer' solut' fuer'. Quodq; in prefat' C. D.
Brevi nostro de Executione Decreti pred' debite inservit'
existen' Decretum predictum performare aut Possessionem
Premissorum deliberare recusasti. Et in prefat' C. D.
per Ordin' dictae Cur' nostrae geren' dat' 21^o die Instantis
Februarii in Contemptu nr'i dictaq; Cur' nostrae adjudicat'
& Prisonem nostre de le Fleet proinde commiss' sis, decret'
pred' Obedientiam reddere omnino adhuc recusas (minus
juste) ut dicitur. Nos ad hac Considerationem habentes,
tibi igitur prefat' C. D. ac vobis prefat' omnibus & singu-
lis ceteris personis supradictis & vestrum cuilibet, sub pena
5000 l. de Terris & Catallis vestris & cujuslibet vestrum
ad opus nostrum levand' firmiter injungend' precipimus quod
Possessionem capital' Messuag' pred' ac Terrarum eidem per-
tinen' & aliorum Premissor' predictor' & cujuslibet inde
Partis & Parcellae abhinc penitus amoveatis & quilibet
vestrum

Notes, This
Injunction
recites the
Defendant's
being com-
mitted to the
Fleet, for dis-
obeying the
Decree, &c.

vestrum amoveat, ac quod prefat' Quer' Hered' & Assignat' suos in capital' Messuag' Terras & Premissa pred' in Decret' predict' mentionat' & express' & quamlibet inde partem & parcellam intrare & ingredi, ac plenam ac quietam Possessionem eorundem, absq; aliqua Interruptione seu Contradictione quacumq; habere, tenere, uti, frui, possidere, & gaudere permittatis, & quilibet vestrum permittat' quovismodo. Teste, &c.

Or it may be without any Recital, thus, viz.

ANna, &c. C. D. &c. necnon cuicumq; al' persone sive quibuscumq; al' Personis aliquod Jus, Status Titul' clamen', Usus, Possessionem, Interesse, vel Demand' de vel in aliquibus illis Messuagiis, Terris & Tenementis scituat' jacen' & existen' in E. & B. mentionat' & specificat' in quadam Querimoni' de A. B. Quer' coram nobis in Cancellar' nostra versus prefat' C. D. & E. F. exhibit. aut de vel in aliqua inde parte vel parcella per vel subter vos prefat' Defendentes, seu vestrum alterum, haben' clamen' vel vendican' & eorum cuilibet, Salutem, &c. Vobis igitur precipimus quod a Possessione predictor' Premissor recedatis & amoveatis & quilibet vestrum recedat &c. eandemq; Possessionem pred' Querenti deliberetis, seu deliberari faciatis, & quilibet vestrum deliberet, seu deliberari fac' dictumq; Quer' talem Possessionem quiete & pacifice habere, tenere, uti, frui, &c.

Another Form, without, Recital of any precedent Matter.

And a Commission to Justices, &c. may be in this Form, viz.

ANna, &c. G. H. & J. K. Mil. & L. M. &c. Gen. Justiciariis dictæ D. R. pro divers' Feloniis, &c. in Com. S. assign' Salutem. Cum quadam Materia Litis & Controversia pendebat nuper coram nobis in Canc' n'ra inter A. B. Quer' & C. D. Def' de pro, & concernen' Fur' & Titulo cujusdam capital' Messuag' &c. ac divers' Terrar' Ten'or' & Hereditam'or' Messuagio pred' portinen' scituat' jacen' & existen' in, &c. in Com' vestro de S. pred' annui valoris 100 l. & nuper in Tenur' sive Occupatione cujusdam S. D. Super Auditu cujus quidem Materie coram nobis in dicta Canc' n'ra habet' Possessio Premissor'.

A Commission to certain Justices of the Peace, &c. to put the Plaintiff in Possession upon a Decree.

missor' prefat' A. per eandem Cur' n'ram adjudicat' & decret' fuit. Cumq; etiam nobis & Cur' Canc' n're pred' ex parte dicti A. nuper ostens' & demonstrat' erat quod ipse prefat' C. Possessionem Premissorum prefat' A. tradere & relinquere omnino recusavit easdem eidem A. assignare seu conveyare juxta veram Intentionem Decreti sive Judicii (& Injunctionis, if you recite the Injunction) pred' filiter denegavit, quod nolumus sic uti, nec debemus aliquo modo tollerare. Sciatis igitur, quod dedimus vobis, sive tribus vel duobus vestrum Tenore Presentium, plenam Potestatem & Auctoritatem ad Messuag' pred' accedendi & ingrediendi, ac plenam & pacificam Possessionem inde, & cujuslibet Partis inde, accipiendi & recipiendi, ac talem Possessionem sic per vos capi' & recept' eidem A. tradendi & deliberandi, & ideo vobis mandamus, quod immediate post Receptionem hujus Brevis n'ri sive Commissionis ad Messuag' & Terr' predictas, cum pertin', accedatis, ac Possessionem inde, & cujuslibet Partis & Parcelle inde, capiat in manus vestras, & recipiatis, & cum ill' sic ceperitis tunc ipso prefat' A. quietam & pacificam Possessionem Premissor', & cujuslibet inde Partis & Parcelle, tradatis & deliberetis, seu tradi & deliberari faciatis, juxta veram Intentionem Decreti pred', ac ipsum prefat' A. in Possessione Premissor' sic per vos possess' de tempore in tempus quotiescunq; necesse & opportun' fuerit contra omnes & omnimodas Perturbationes & Interruptiones quasque conservari, preservari, & incolume reddi faciatis. Et hoc sub pena pericul' incumben' nullatenus omittatis. Teste, &c.

Or instead thereof a Commission may be to the Sheriff of the County, thus viz.

A Commission to the Sheriff to put the Party in Possession of Lands, pursuant to a Decree to the Plaintiff and his Heirs.

*AN*na, &c. Vic' Cam' S. pro tempore existen' & in futuris temporibus, Salutem. Cum per quoddam finale Judicium sive Decret' coram nobis in Cur' Cancellar' n're nuper fact' inter A. B. Quer' & C. D. Def. geren' dat' &c. ordinat' adjudicat' & decret' sit (inter alia) quod pred' Quer' Hered' & Assignat' sui quoddam Messuag' &c. sibi per quandam Certificationem in dict' Decreto mentionat' seposu' in tam amplis modo & forma prout idem Messuag' &c. per Certification' pred' seposita esset vers' pred',

pred' Def. Heredes & Assign' suos ac omnes per vel subter ipsum claman' haberent tenerent & gauderent juxta Tenorem cujusdam Ordinis sive Decreti super Auditu Materie inter partes pred' fact'. Cumq; pred' Def' cum Brevis n'ro de Injunctione pro Possessione Premissor' in Complement' Decreti pred' emanat' debite inservit' fuit, eidem tamen obtemperare omnino recusavit. Sciatis igitur quod dedimus tibi plenam Potestat' & Auctoritat' ad & in pred' Messuag' &c. sic ut prefertur dicto Quer' adjudicat' & decret' accedendi intrandi, & ingrediendi, ac quamcunq; Personam, sive quasq; Personas Possessionem Messuagii pred' contra Tenorem Decreti pred' detinen' a Possessione ejusdem ejiciendi & amovendi, dictumq; Quer' Heredes & Assignat' suos, in plena, quieta & pacifica Possessione pred' Messuagii, cum Pertin' & cujuslibet inde Partis & Parcell' ponendi, locandi, stabiliendi, & conservandi. Et ideo tibi mandamus, quod immediate post Receptionem hujus Brevis n'ri, (vel Commissionis) ad Messuag' pred' sic ut prefertur per dictum Decret' prefat' Quer' adjudicat' accedas, ac si necesse fuerit intres & ingrediaris, ac quamcunq; Personam sive quasq; Personas Possessionem ibidem contra Tenorem Decreti pred' detinen' sine dilatione ejicias & amoveas, ac plenam quietam & pacificam Possessionem pred' Messuag' cum Pertinen' ac cujuslibet inde Partis sive Parcella in manus tuas capias & recipias, talemq; Possessionem sic per te captam & habitam, pred' Quer' & Assignat' suis deliberes indilate, ipsumq; Quer' Tenen' & Assign' suos in hujusmodi plena, quieta, & pacifica Possessione dicti Messuagii, cum Pertin' suis, & cujuslibet inde Partis & Parcella, de Tempore in Tempus toties quoties Interruptio quevis illat' fuerit aliquantulum tuearis & conserves, seu conservari facias, juxta Tenorem Decreti pred'. Et hoc nullatenus omittas quovismodo. Testi, &c.

A Writ of Assistance.

ANna, &c. Vic' nostro S. pro Tempore existen' Salutem. A Writ of Assistance to
Cum C. D. Gen' per Breve nostrum de Injunctione the Sheriff
e Cur' Canc. nostre nuper emanat' secundum quendam Or-
din' cor' nob' in dicta Cur' nostra fact' inter W. M. Gen' for the same
& Ux' ejus, &c. Quer' & J. S. &c. Def' geren' Dat' Purpose.

20 die Maii ult' preterit' nuper precept' fuit quod idem J. S. a Possessione capital' Messuag' vocat S. ac quarundam Terrarum, &c. in Com' suo in Breui predicto & in quadam Commissione quibusdam Iusticiariis nostris in & pro Com' pred' assign' nuper direct' ac in quodam final' Iudicio sive Decreto coram nobis in dict' Cur' nostra inter Partes pred' nuper fact' & reddit' geren' Dat' 18 die Februarii ult' preterit' mentionat' & specificat' ad hunc penitus amoveant & quod permittant presat' Quer' in Premissa pred' intrare & ingredi, ac plenam ac quietam Possessionem eorundem habere, tenere & gaudere. Jam quia datum est nobis intelligi quod pred' J. S. Mandato nostro in Breui de Executi' Decret' pred' & in Breui de Injunctione pred' ac in Commissione pred' content' parere recusat' scias quod nos in complemen' al' Ordin' coram nobis in dicta Cur' Canc' nostre fact' inter partes pred' geren' dat' horum presentium. Dedimus ac Tenore Presentium damus tibi plenam Potestatem & Auctoritatem ad Premissa pred' in Decret' & Injunctione ac in Commissione pred' mentionat' & express' accedendi eaq; intrandi deinq; Des' pred' ac omnes al' in Possessione Premissi' existen' contra Tenorem Decret' ac Injunction' & Commission' pred' e Possessione eorundem amovend' ac presat' Quer' in plena, quiete, et pacifica Possessione omnium & singulorum Promissorum predictorum indilate, & sic de Tempore in Tempus toties quoties necesse fueris ponend' eosq; Hered' & assignat' suos in tali Possessione de Tempore in Tempus conservand' & quietand'. Et ideo tibi mandamus, quod immediate post Receptionem huius Brevis ad Premissa pred' accedas, easq; intres, ac dictum Defendentem ac omnes al' in Possession' Premissi' existen' contra Tenorem Decreti Injunction' & Commission' pred' e Possessione eorundem amoveas ac pred' Quer' omnium & singulor' Premissi' pred' indilate habere facias plenam pacificam & quietam Possessionem eosq; Hered' & Assignat' suos de Tempore in Tempus toties quoties necesse fuerit in tali Possessione ponas & constitues seu poni & constitui facias, ac de Tempore in Tempus in eadem preserves, custodias, & continues, & preservari & custodiri facias, juxta Tenorem veramq; Intentionem Decreti & Brevis nostri de Injunctione & Commissionis pred'. Teste, &c.

See another Injunction, and a Writ to the Sheriff to put the Party in Possession of Lands, ante Pag. 92.

A Writ of Execution of a Decree for Payment of Money, is in this Form, viz.

Anna, &c. C. D. salutem; Cum per quoddam finale Judicium sive Decretum coram nobis in Cur' Canc' nostre fact' inter A. B. Quer' & te presat' C. D. Def' & geren' Dat' 11^o Die Junii ult' preterit' ordinat' & adjudicat' existit quod solveres præd' A. B. 1000 l. bone & legalis Moneta Mag' Brit' Nosq; Decret' dictæ Cur' nostre inviolabiliter observari volentes: Tibi præcipimus & firmiter injungendo Mandamus quod immediate post receptionem hujus Brevis præd' 1000 l. præfato A. B. (vel latori presentium) debito modo solvas seu solvi facias juxta Tenorem, effectum, veramq; Intentionem Decreti præd'. Et hoc sub periculo incumben' nullatenus omittas. Testes, &c.

Of Exemplifying Decrees, &c.

AN Exemplification is the Copy or Example of a Matter recorded or inrolled; as Decrees, Letters Patents, Depositions, &c. and is made out or copied from the Inrolment thereof, and sealed with the Great Seal. Exemplification defined:

And such Exemplifications are as effectual to be pleaded, or produced in Evidence, as the Decree, or Letters Patents, or Depositions themselves are. And pleaded, &c.

And note, Nothing but Matter of Record ought to be exemplified; 3 *Inst.* 137. li. 5, 53. What may be exemplified

And therefore all Decrees, Deeds, &c. must be first inrolled before they are exemplified. Matter of Record, &c.

An Exemplification of a Deed may be ordered to be pleaded at Law, where the Deed enrolled cannot be produced; *Tot.* 89. Decrees. Deeds.

Touching the Exemplifying of Depositions, &c. *vide ante Chap. XI.* Depositions.

But 'tis said, That Proofs cannot be exemplified without Bill and Answer; and therefore if a Bill be dismissed for Irregularity, or Impropriety of Jurisdiction, &c. as not proper for this Court, or where it was by way of Revivor, when it should be by Original Bill, so that there never was any such Cause in Court, the Proofs, &c.

Difference.

Depositions in such Cases cannot be exemplified, seeing the Bill could not; 1 *Chan. Caf.* 175.

But *contra*, if the Bill was dismiss'd only because the Matter of it was not proper for Equity to decree, (*i. e.* where the Court had Jurisdiction of the Cause, but dismiss'd the Bill for Want of Equity at the Hearing) in such Case the Proofs may be exemplified. *Ibid.*

Form of an Exemplification of a Decree.

A N N A, &c. omnibus ad quos presentes Literæ nostræ pervenerint salutem; Inspeximus Irrotulamentum cujusdam finalis Judicii sive Decreti coram nobis in Cur' Canc' nostræ nuper facti & reddit' ac in Rotulis dictæ Cur' nostræ Irrotulati ibidemq; de Recordo remanen' cujus Tenor sequitur in hæc verba, &c. (and so set out the Decree verbatim; after which conclude thus:) Nos autem Tenorem Irrotulament' finalis Judicii sive Decreti prædict' ad requisitionem præd' Quer' (or, ad requisitionem G. H. &c.) duximus Exemplificand' per presentes: In cujus Rei Testimonium hæc Literas nostras fieri fecimus patentes.

Teste, &c. P. Parr.

These Exemplifications are docketted thus, *viz.*

How docketted.

In Canc' 29 Junii 1713. An Exemplification of the Inrolment of a Decree in this Honourable Court, in a Cause wherein A. B. is Plaintiff, and C. D. and others, are Defendants; exemplified at the Request of G. H. &c.

Examinatur per Nos,

T. H.

E. M.

In Canc' Magros.

And certified thus, *viz.*

And certified.

We the Masters in Chancery, whose Names are hereunto subscribed, have carefully examined the Exemplification mentioned in the Docket of the said Exemplification on the other Side, with the Inrolment thereof; and do certify the same to be a true Exemplification of the said Inrolment.

T. H.

E. M.

And

And on the Back of the Exemplification is indorsed And indorsed thus, viz. thus.

An Exemplification of a Decree in Chancery, in a Cause there, wherein, &c. exemplified at the Request of, &c.

And in the like Form, an Exemplification may be of the Bill, Dedimus, Answer, Replication, Commission to Examine, Interrogatories, and Depositions, &c. as follows. viz. Exemplifications of

Anna, &c. *Inspeximus quandam Billam sive Petitionem coram nob' in Cur' Canc' nostra per A. B. nuper exhibit' ac in filaciis dicta Canc' nostra de Recordo remanen' in hac verba. 10^o Julii, &c. Barnardiston.* Bills, &c.

Inspeximus etiam Tenorem cujusdam brevis nostri de Dedimus Potestatem unacum Indorsamenti de & super eodem brevi fact' quibusdam Commissionar' direct' ad recipiend' Responiones predictor' C. D. & E. F. ad Petitionem predictam in filaciis Curia predicta similiter residen' in hac verba. Anna, &c. Executio, &c. Ded' Pot'.

Inspeximus in super (nec non) Responiones predictor' C. D. &c. virtute bevis nostri de Ded' Pot' capi', & in Cur' predicta unacum brevi nostro predicto retornat' ac in filaciis ibidem quoq; residen' in hac verba. Barnardiston. The joint and severall Answers of, &c. Answers.

Inspeximus deinceps Replicationem predict' A. B. ad Responiones prefat' C. D. & E. F. fact' ac in filaciis dicta Curia Cancellarie nostre de Recordo etiam remanen' in hac verba. The Replication of A. B. &c. Replication.

Inspeximus porro Tenorem cujusdam brevis de Commission' quibusdam Commissionar' direct' ad examinandum Testes inter Partes predictas unacum Indorsamento superinde fact' ac in filaciis Curia nostra predict' de Recordo etiam residen' in hac verba. Anna, &c. Executio, &c. Commission to examine.

Inspeximus deinde quadam Interrogator', ex parte prefat' A. B. Quer' versus predictos C. D. & E. F. predictis Commissionar' exhibit' ac in filaciis dicta Curia nostra de Recordo remanen', in hac verba. Interrogatories, &c. Interrogatories.
Inspeximus

Depositions. *Inspeximus denique Depositiones quorundam Testium ex parte præd. A. B. Quer' vers' prædictos C. D. et E. F. Defendentes virtute brevis nostri de Commissione præd. coram præfat. Commissionat' capt' & examinat', ac in Cancell' nostram prædictam unacum Commissione & Interrogator' prædictis certificat' ac ibidem de Recordo in filaciis residen' in hac verba. Depositions, &c.*

Conclusion. *Nos autem Tenores Petitionis, brevis de Dedimus Potestatem Responson', Replication', brevis de Commission' ad Examinand', Interrogator', Deposition', Testium ad Requisition' (of him that prays it) Duximus Exemplificand' per præsentis: In cujus Rei Testimon', &c.*

Note, The several Adverbs of Order introductory to each Clause, are regularly to be placed in this Manner, viz. 1. Inspeximus. 2. Inspeximus, etiam. 3. Ulterius. 4. Præterea. 5. Similiter. 6. Necnon. 7. Quoque. 8. Insuper. 9. Porro. 10. Deinceps. 11. Denique.

Of Reviving Decrees, &c.

When by Subpæna Sci' fa. or by Bill of Revivor.

WHERE a Decree is inrolled, and a Party dies, or a Female Plaintiff Marries, or that there have been no Proceedings on a Decree for a Year past, the Decree and Proceedings must be revived by a *Subpæna Scire facias*; though in a Case of a Decree inrolled a Revivor by Bill hath been allowed good. 1 Chan. Caf. 37.

Election.

And it is said, Where you can revive by a *Subpæna Sci' Fa'*, it is in your Election to do it either by that Process, or by Bill of Revivor: But where after the Decree, there have been other Proceedings, which can not be revived by the said *Subpæna*, this sure must be done by Bill. *Vide 2 Chan. Rep. 67.*

Privies.

If the Parties that would revive the Decree, be in Privy of Blood to the first Parties, *viz.* as Heirs, or in Privy of Contract, as Executors or Administrators, they may revive it by a *Subpæna Sci' Fa'*.

This

This *Subpæna* is obtain'd either on Petition or Motion, and must be served two Days at least before the Return; in all other Respects the Service is like that of a *Subpæna ad Respond'*. *Vide Ord. Chan. 115.*

And on the Return of the *Subpæna*, if no Cause be shewn to the contrary, the Decree will upon Affidavit of Service, and a Motion to that Purpose, be ordered to stand revived, *Nisi*, &c.

And in such Case it is to be revived without Costs to the other Party.

But if there be neither Privy in Blood, nor Privy in Contract, the Decree or Cause must be revived by an Original Bill; and not by *Subpæna Sci' Fa'*, or Bill of Revivor; and therefore an Assignee or Devisee cannot have a Bill of Revivor, being in Nature of Purchasers only. *Vide 1 Chan. Cases, 122, 174.*

Also a Bill of Revivor lies not upon a Decree of a long standing; but in such Cases is to exhibit on Original Bill, and to set forth the Decree as Evidence. *1 Chan. Cas. 216.*

A Decree was signed and inrolled, omitting Part of the Matter decreed by a Decretal Order; and the Defendant being dead, (so that there was no helping it by Motion) a Bill of Revivor was brought to revive (as was alledged) the Part of the Decree omitted, tho' in truth it extended to the whole Decree. To this the Defendant pleads, That the Decree being inrolled, a Bill lay not, but a *Subpæna Sci' Fa'*. But the Plea and Demurrer were over-ruled; and it was said, A *Subpæna Sci' Fa'* would only have revived the Decree, and the Proceedings before it, but not those since. *1 Chan. Cases 37.*

A Bill of Revivor was brought where there had been some Proceedings touching Costs after the Decree, and adjudged good. *2 Chan. Rep. 67.*

And yet a Bill of Revivor lies not to revive a Decree made for Costs only. *Ibid. 195. & 246. & 2 Chan. Cases 7.*

And 'tis said, No Defendant, or any other, who represent him, can or ought to revive in case of an Abatement happening before the Decree, or final Order be signed and inrolled. *2 Chan. Rep. 195.*

Of Original Bills to execute, confirm, inforce, avoid, reverse or revive Decrees.

Original Bill to execute ;
Or confirm a Decree.

AN Original Bill may be brought to inforce the Execution of a Decree.

So a Decree by Commissioners for charitable Uses, was confirm'd by Original Bill in the Case of the Poor of *St. Dunstan's* against *Beauchamp*. 1 *Chan. Caf.* 193.

To avoid a Decree upon Matter subsequent.

A Decree was avoided by Original Bill, upon a Matter subsequent to the Decree. 1 *Chan. Caf.* 64.

Upon a Title Paramount.

Also a Decree was avoided by Original Bill, because claiming by Title Paramount, *inter Venables* and *Foyle*. 1 *Chan. Caf.* 3.

To inforce an Act decreed.

In like manner a Bill was to inforce a Person to do an Act, which the Plaintiff was formerly decreed to procure. *Ibid.*

But not to explain a Decree.

No Original Bill ought to be admitted to explain a Decree, upon any Matter of Fact precedent to the Decree. 1 *Chan. Caf.* 45.

To put a period to a temporary Decree.

An Original Bill lies to put a Period to a Decree, which is temporary, or for special Ends. 1 *Chan. Caf.* 151.

To revive a Decree.

Of Reviving Decrees by Original Bill, *vide* 355, 375.

Decree for Enjoyment, and Bill for mean Profits.

After a Decree for Enjoyment, a second Bill may be exhibited for the mean Profits, for further Assurances, or for Evidences ; as the Case may be. 2 *Chan. Caf.* 72, 134, 137.

C H A P. XIV.

Of Reviewing and Reversing Decrees, and herein of Bills of Reviews, and of Appeals in Parliament.

Decrees reversed by Bill ;
Or by Appeal.

DECREES are ordinarily revers'd two Ways *viz.* 1st. By Bills of Review exhibited in the same Court ; and, 2^{dly}, By Appeals in Parliament, directed, To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

And

And when the Decree is to be revers'd by a Bill of Review, the Matters therein assigned for Error must appear in the Decree it self: But when you proceed by Appeal in Parliament, you may assign any Matter therein, though not appearing in the Decree. How by Bill.

A Bill of Review is a Petition to reverse a former Decree upon some *Error of Law* appearing in the Body of the Decree it self; without any Averment of Matter *dehors*, or any further Examination of Matter of *Fact* before the Decree, or of any Matter of *Record* which might have been heard at the Time of the Decree. Bill of Review defined.

But though this Bill cannot regularly be brought upon any Matters in *Fact*, or upon any other Matters of *Record* than the Decree it self; yet if there be Oath made of the Discovery of some *new Matter*, which could not possibly be had or used at the Time, when the Decree passed, a Bill of Review may be exhibited by Leave of the Court, but not otherwise. When to be brought.

And note, No Witnesses, which were, or might have been examined on the former Bill, shall be examined to any Matter on a Bill of Review. No former Witnesses to be.

This Bill was brought upon a Suggestion, That the Plaintiff could not prove a Tender and Refusal, which he could not prove before. This was urged as new Matter; but upon Search of Precedents, and none warranting it, the Bill was dismiss'd. 2 *Chan. Rep.* 66. New Matter.

But in Cases of miscasting or misnumbring only, that being a Matter demonstrative may be explained and reconciled by Order only, without a Bill of Review. Miscasting, &c.

And where a Cause has been dismiss'd upon full Hearing, and such Dismission signed and inrolled, it cannot be retain'd again, but by Bill of Review, and that only in some special Cases. Cause dismiss'd.

After a former Bill of Review had been dismiss'd, the Party brought another suggesting further Errors, &c. But this was dismiss'd also; for *Interest Reipublicæ ut sit finis Litium.* 1 *Chan. Cas.* 1.

If a Decree, or any Part of it, be in the Nature of Things impossible, or if it be repugnant, or one Part contradictory to the other, it is erroneous, and may be revers'd on a Bill of Review. 1 *Chan. Cas.* 86. Decree impossible, &c.

But

Not after 20 Years, tho' Error in the Decree:

But though there be apparent Error in a Decree, yet if the Party has rested under it sixteen or twenty Years, the Court in some Cases will not reverse it upon a Bill of Review. 1 *Chan. Rep.* 140.

Nor Want of Form.

Nor will the Court reverse a Decree for Want of Form, or for mistaking an Account; for that may be help'd by a Master, without a Bill of Review.

Not to alter what is decreed.

Nor shall a Bill of Review, or any other new Bill, be admitted to change or alter a Matter already decreed, till the Party has obey'd the Decree in all Things, which stand upon the Strength of the Decree only; and wherein the Court can set *him* in as good a State again as he was, in case the former Decree happen to be revers'd.

Decree to be first perform'd.

As where the Decree is to yield up the Possession of Lapds, to deliver Writings, or to pay Money, he must first perform these Things, before he is to be admitted to a Bill of Review: Except the Court sees Cause to dispense with the Manner of the Performance, &c. as where Money is decreed, the Court will perhaps dispense with the Payment of it upon giving good Security. 1 *Chan. Cas* 42.

But not to extinguish the Party's Right.

But if the Decree requires an Act to be done, which would extinguish the Party's Right at Common Law, (as Conveying Lands, Releasing a Debt, or Acknowledging Satisfaction, Cancelling Records and Evidences, and the like) those Parts of the Decree will be spared, and will of course be stay'd by Order of Court, until the Bill of Review be determined.

Order for staying Execution.

But the Plaintiff in Review must move for an Order to stay the Execution of the Decree in those or the like Particulars, or in what else is proper to be stay'd, if he expect to have it so.

Leave to be given.

This Bill is not to be brought except Leave be given for the same, either on Petition or Motion.

And heretofore it was not to be brought, except the Party, who preferr'd it entered into a Recognizance, with Sureties to satisfy the Costs and Damages for the Delay, in case the Matter thereof were found against him.

And 10*l.* deposited.

But by a late Order, 10*l.* was to be deposited in Court as a Security; and by a later Order, 20 Pounds is now to be deposited.

And

And this 20^l. must be deposited before the Bill of Review be filed, (answered:) But on a Rehearing (which see before pag.) 'tis perhaps well enough if the Deposit be made some convenient Time before the Hearing.

Before the Bill filed.

As in the Case of Bills of Revivor, so also in Bills of Review, none but such as are Parties or Privies can ordinarily bring them. *Ante 74.*

By Party or Privy.

Yet in some Cases, where a Man is affected or grieved by a Decree, he may have this Bill; as where a Parish was sued, and four of the Parishioners named only Defendants, another Parishioner, whose Right or Interest is affected, &c. may bring this Bill.

Or Person grieved!

But a Devisee is not intitled to a Bill of Review of a Decree had against the Testator, he not being privy to him; and 'tis said an Assignee cannot revive, nor review.

Not by Devisee, or Assignee:

Several coincidental Causes being brought to Hearing at the same Time, a Decree past against one, who, though a Party in one of the Bills, yet was not one in the Bill, to which some Part of the Decree affecting him related: And this upon a Bill of Review was held to be no Error. *2 Chan. Cas. 234.*

Or one concern'd in a coincidental Cause:

An Account was decreed, pending which the Suit abated; the Account was carried on, finished, confirmed and decreed, and afterwards the Decree inrolled: This Matter, upon a Bill of Review, was held no Error, or Cause of Reversal. *1 Chan. Cas. 122.*

Nor on an Account stated and decreed.

Decrees in inferior Courts, may by Bill here be re-examined, and affirmed or reversed, as the Court sees Cause: But such Bills are more properly Bills of Reversal, and not Bills of Review.

Decrees in inferior Courts.

'Tis said, no Witnesses which were, or might have been examined on the former Bill, shall be examined to any Matter on the Bill of Review.

No former Witnesses.

'Tis also said, If an Infant be Plaintiff, he is bound by the Decree of this Court, except there be a saving Clause therein, in which Case he may upon Petition to the Lord Chancellor, within six Months after he comes of Age, have the Cause reheard.

Decrees in Cases of Infants Plaintiffs:

And 'tis said, There ought of Course to be such saving Clause for an Infant Defendant, upon which he may have the like Remedy; and if there be not such

Or Defendants.

a Clause

a Clause for him in the Decree, it is erroneous, and he may help himself by Bill of Review.

And, that if a Decree be made against an Infant, not allowing him Time to shew Cause after he comes of Age, it is Error, and he may bring his Bill of Review.

What is a
Ground for a
Bill of Re-
view, or not.

In the Case of *Curtes* against *Smalridge*, 1 *Chan. Cas.* 43, 44. it was insisted on as a Rule, That nothing shall be a Ground to direct a new Trial to avoid a Judgment at Law, that would not be a Ground for a Bill of Review to reverse a Decree; and that a Confession subsequent to a Decree, is no Ground for a Bill of Review: Nor is the Want of any Evidence or Matter, which might have been used in the first Cause, and of which the Party had then Knowledge, any Ground for a Bill of Review.

Bill of Re-
view and De-
cree ex-
amin'd and
reversed for
Matters ap-
pearing a-
gainst a Sta-
ture.

If in Chancery a Decree be against a Statute, as the the Case was against the Statute of Wills, by which the Common Law is affirmed, That where the Land is held *in capite*, one third Part shall be suffered to descend to his Heir; and the Father devises all for the Payment of Debts, which is void for a third Part, and the Chancery confirms it for this third Part by a Decree; this Decree may be re-examined and reversed, because it is against the Statute, and so the Chancery errs in Law, *Trin* 15 *Jac. in Canc' inter Ruswell* and *Every*, adjudged upon a Demurrer *per Bacon*, Lord Keeper; and after *Mich.* 16 *Jac.* the Decree was reversed accordingly by the Advice of Justice *Dodderidge* and Justice *Hutton*, Assistants to the Court. 1 *Roll. Abr.* fo. 382. Z. 1.

Where the
Chancellor
errs in Mat-
ters of Law
appearing in
the Decree,
but not upon
a Matter of
Fact *debors*.

So if the Chancellor errs in a Decree in a Matter of Law, and it appears within the Decree; as if the Chancellor makes a Decree upon the Law upon his own Opinion, against the Opinion of the Judges, that this Decree may be reviewed for this Error in Law. *Trin.* 15 *Jac. in Canc'* in Sir George Reynel's Case, adjudged upon a Demurrer by *Bacon* Lord Keeper, *Trin.* *Jac. in Camera Scaccarii per Cur.* This Bill of Review is in Nature of a Writ of Error. 27 *H.* 8. 15. there was a Matter of Law, and adjudged that it might be reversed there. *Rolls Abr.* 382. pl. 2. *Vide Lane* 69, 70. and *Hard.* 51.

But

But if the Chancellor errs in his Decree upon a Matter of Fact, this Decree is final, and cannot be reviewed, because they cannot go to a new Examination of Witnesses now; for after Publication, this cannot be done. *Trin. 15 Jac. in Canc.* This was so held by the Lord Keeper in the said Case, *Trin. 8 Jac. inter Arden & Darcy per Cur. 1 Rolls Abr. 382. pl. 3. Et vide Lane 68, 69. same Case.*

Aliter where the Court errs upon Matter of Fact.

Vide Hard. 51. same Point arguendo, 174. same Point resolved. Where there is no Remedy against a Decree in a Court of Equity. *2 Bulst. 197, 215. Cro. Jac. 336.*

Where no Remedy after Decree.

And *3 Bulst. 118.* it is said, That where a Man is wronged by a Decree, his best and only Way to have Remedy, is by Petition to the King, who may refer it to the Judges to give Redress therein. *4 Inst. 85.* but not to others. *1 Roll. Rep. 331.*

Best Way for Remedy upon a Decree.

But *12 Co. 113.* it was resolved by the Lord Chancellor, Chief Justice, Master of the Rolls, and two Judges, That the King cannot grant a Commission to determine a Matter of Equity, but it ought to be determined in the Chancery, which hath had Jurisdiction Time out of Mind.

And where 'tis before said, That the Bill is final, and cannot be reviewed, it is also observed it cannot be altered by Original Bill, *1 Chan. Cas. 45.* unless for Matter subsequent. *Id. 64.*

Where not by Original Bill.

So if the Chancellor errs in his Conscience, upon a Matter of Fact proved before him, there may be a Review upon this Matter, because there needs no new Examination, but this may be reviewed upon the old Depositions, and this is usual. *1 Roll. Abr. 382. pl. 4.*

Rehearing upon the old Depositions.

If there be a Decree made by Commissioners upon the Statute of *43 Eliz. cap. 4.* of charitable Uses, and Exceptions put in against it in Chancery, and there 'tis heard, examined and confirmed, it cannot upon a Bill of Review be further examined; for the Authority of the Chancellor is given by the Act, which mentions but one Examination: So that it is not like a Decree made by the Chancellor by his ordinary Authority, *Mich. 2. Car. inter Windsor and the Inhabitants of Farnham, Cro. Car. 40* resolved by three Judges upon a Reference to them out of the Chancery. *Vide 7 Cro.*

Where no Bill of Review upon a Decree upon the Statute of charitable Uses.

Matters assigned for Error in a Decree must appear in the Decree it self, for being of Record, must be tried by it.

If the Fact be mistaken at the Hearing and decretal Order, that must be rectified by Re-hearing, and not otherwise.

To reverse a Decree made and enrolled above 20 Years past.

7 Cro. Car. 351. Same Case cited. 1 Jon. 147. Same Case resolved by four Judges upon a Reference to them.

The Bill was a Bill of Review, and upon drawing up the decretal Order, the Matter, upon which the Decree was made, was declared to be proved, and the Case stated far different from the Fact. The Errors assigned by the Bill were, That the Decree was grounded on Matters not proved and instanced in Particulars, and that the Matters mentioned in the Decree to be proved, were not proved, &c. The Demurrer was general, That the Decree contained no Error in Law; and that the Matters alledged for Error were but Misjudgment. And upon Debate it was declared, That upon a Bill of Review the Causes for Review must arise and appear upon the Case as it is stated in the Decree, and that the Facts must be admitted as there stated.

And that where the Fact is mistaken, upon which the Court grounded their Judgment; it is proper in such Case, for that Reason, to have the Cause reheard before the Decree be inrolled: Yet after the Decree enrolled that is no Ground for a Bill of Review; for the Decree inrolled is Matter of Record, and can be tried by the Record it self after it is inrolled, and must be taken to be true; and so the Demurrer was allowed. 1 Chan. Cases 54. *Combs* against *Proud. Trin. 16. Car. 2.*

And there 'tis observed, the Reason why the Review did not lie, was, because as the Decree was drawn up, there was no Error appeared in it. *Id. 55.*

In the Case of *Slingsby* against *Hale. 1 Chan. Cases, 122. Hill 20 & 21 Car. 2.* upon a Bill of Review to reverse a Decree made and inrolled above 20 Years past, where upon a Reference to a Master to take an Account of a Mortgage; pending the Reference the Suit abated by the Death of one of the Parties Defendant; yet notwithstanding (no Notice being taken thereof) the Account went on, and the Master made his Report, which was confirmed, decreed and inrolled. And now the Plaintiff being Devisee of the Mortgager by his Bill of Review, assigns the Abatement for Error, in respect there was no Cause in the Court, when the Account was stated, and the Decree

drawn

drawn up and inrolled, &c. The Defendant demurred, for that *in nullo est erratum*, and the Plaintiff not intituled to a Bill of Review: And thereupon the Court declared, they saw no Cause to alter the Decree; and so allowed the Demurrer, and dismiss'd the Bill. But upon Complaint to the Lord's House, the Matter of the Demurrer was reheard by the Lord Keeper, Chief Justice *Hale and Vaughan*, and they all three delivered one uniform Opinion, That the Plaintiff being Devisee is not intituled to a Bill of Review, being not in Privy to the Testator, against whom the Decree was; as if a Judgment be against Land, and the Owner aliens the Land, the Alienee cannot bring a Writ of Error, nor the Vendor; and so dismiss'd the Bill for this Reason principally.

A Decree pass'd where the Bill was never answered, but the Bill taken *pro confesso*, though the Party Defendant never answered, but only appeared by his Clerk, and the Bill never read in Court, as it ought to have been. A Bill of Review was brought, and on Demurrer dismiss'd: Now the Heir brought another Bill of Review, and though there was manifest Error, not only in the Form of the Decree, but in the Right also, *viz.* Two Persons having Title as Heirs, one of them had a Decree for the whole, who had Title but to a Moiety, yet the Lord *North* said, there was no Remedy but in Parliament, and cited *Mordant*, or *Morgan's Case*, and so dismiss'd the Bill. 2 *Chan. Cases* 133.

The Plaintiff, who had a Decree, brought a Bill of Review, and thereby complained, That he had not enough decreed him; and a Demurrer was thereto, for that if a Bill of Review lies, it lies only for him, against whom the Decree of Dismission is: And after a long Debate, the Demurrer was allowed, 14 *Maii* 16 *Car. 2.* in the Case of *Glover* against *Portington*.

A Bill of Review on the ill Wording of the Decree was brought to Hearing, and the Decree was read, and the Objections made against it, That the Decree was founded on a Trust arising on an Agreement, but doth not say, that such Agreement was proved, but only [whereupon, and upon reading the Proofs, &c.] and therefore it was insisted, That the Decree was

Proceedings (after an Abatement) decreed and enrolled, no Error, or Cause of Reversal.

A Devisee cannot maintain a Bill of Review, because he is not in Privy.

No new Bill after a Bill of Review where a Decree had been made upon a Bill taken *pro Confesso*, where there was no Answer.

No Bill of Review for him, on whose Side the Decree is.

Upon the ill Wording of a Decree

Decree ought
to be ground-
ed upon Fact.

How the de-
cretal Part
ought to be
worded.

made on the Bill and Answer. Mr. Solicitor said it was the Course; and that when it is said, *On reading the Proofs it is decreed*, it is intended that the Matters put in Issue are proved. But *e contra*, it was said, That a Decree ought to be grounded on Fact, or else by the Clerk's Course the Defendants should be barred of a Review in all Cases; for the Plaintiff in a Bill of Review cannot alledge Matter of Fact contrary to what is stated in the Decree to be proved; and it may be many Issues are joined in the Bill and Answer; if this Course should hold, all must be admitted, and no Man can truly know on what Fact or Case the Decree was made, nor any Appeal brought. The Lord North declared accordingly, and was clearly of Opinion, That it was not enough to say, *On reading the Proofs it is decreed*, &c. But *upon reading the Proofs it appeared thus and thus, and therefore decreed*, &c. *Inter Broad and Broad.* 2 Chan. Cases 161.

Note, the End of a Bill of Review being to reverse a Decree formerly made, you are first to get a Copy of such Decree after it is signed and inrolled; for therein you are to recite the former Proceedings, as they are recited in the said Decree, according to the ensuing Form, viz.

To the Right Honourable Simon Lord Harcourt,
Baron of Stanton Harcourt, Lord High Chancellor
of Great Britain.

Bill.

Appearance
and Answer,
&c.

Humbly complaining, shew unto your Lordship your Orators *A. B.* and *C. D.* of, &c. That *J. E.* the Elder of, &c. did in *Trinity-Term*, in the Year, &c. exhibit his Bill against them the said *A. B.* and *C. D.* and also against one *W. B.* thereby setting forth, That whereas, &c. (*according as the former Bill is recited in the Decretal Order*) and for Relief therein the said *J. E.* prayed the Process of this Honourable Court against your Orators and the said *W. B.* wherewith your Orators, then Defendants, being served, did appear: And in *Hillary-Term*, in the Year, &c. your said Orators put in their Answers to the said Bill, and thereby, amongst other Things, did deny, or confess, or avoid, &c. (*according as the Substance of the said Answers*

swers are also set forth in the Order) and denied all Combination as by the said Bill and Answer, Relation being thereunto had, more fully appears: Whereupon the said *J. E.* replied, and your Orators rejoind'd, and Issue being join'd, Witnesses were examined on the Plaintiff's Part, and the said Cause was set down to be heard, and your Orators being served with Process of *Subpoena* to hear Judgment, did not attend on the Day assigned for that Purpose, but made Default; whereupon the said Cause coming to be heard on, &c. Upon opening of the then Plaintiff's Bill, and reading your Orator's Answers, and the Grant made by the late King *Charles* the First, unto the then Plaintiff, and others of the said Rectory of *S.* and upon reading of divers ancient Records, &c. shewing as well the Title of the Crown to the said Rectory, as also what Rent, &c. had been answered to the Crown for the same since, &c. And also upon reading the Depositions of Witnesses taken on the Plaintiff's Part, your Orators not having then examined any Witnesses: Upon all which it was then ordered by the Court, That a Decree should be drawn up to establish the Payment of the said, &c. in Question, with the then Plaintiff and his Assigns, until he or they should be evicted by Law, unless Cause were shewed to the contrary at the first Sitting on *Monday* the then next Term, at which Time the Court would also consider what Allowance should be given to the Complainant for the said, &c. of the five Years Arrears thereof mentioned in the said Bill. Whereupon on, &c. following, this Court was moved on the Behalf of your Orators then Defendants, and it was alledged, that they were not ready for the Defence of the Cause at the Time of the Hearing before-mentioned, neither did make any Defence at the said Hearing, the Depositions and Examinations of their Witnesses being sent up by the Post, and none here to make Oath they were received from the Hands of a Commissioner, as by the Course of this Court ought to have been done, and therefore they could not be made Use of at the Hearing: And thereupon it was moved, and desired by your Orators, that they might then be heard therein. Upon which Motions, and upon reading

Hearing *ex parte.*Order *nisi.*

Motions.

Rehearing on
paying Costs.

Trial at Law
directed,

Had at Bar.

Verdict for
the Plaintiff.

Several *Affidavits*, as well on the Part of the said *J. E.* as on the Part of your Orators, it was ordered by this Court, That your Orators should before the Beginning of the then next *Trinity-Term*, pay to the said *J. E.* 5*l.* for Costs; and if the said Money were paid accordingly, then the said Cause to be reheard the second *Monday* of the said *Trinity-Term*, or otherwise not: On which Day the said Cause coming again to be heard, according to the said last recited Order, upon full and deliberate Hearing of the said Cause, and reading the Depositions taken on the Part of your Orators, and debating of the same by Counsel Learned on both Sides, it was thereupon ordered by the Court, by and with the Consent of both Parties, That the Custom set forth in the said Bill should be referred to a Trial at Law in an Action upon the Case, to be brought by the said *J. E.* against your Orators, then Defendants in the Office of Plea of that Court after the usual Manner. That in Consideration of one Shilling given by the said *J. E.* to your Orators, your Orators did promise to pay the said *J. A.* 5*l.* if the said *J. A.* could prove the Custom alledged in the said Bill; in which Action your Orators were ordered to confess Circumstances, that is to say, the Considerations and *Assumpsit*, and both Parties to stand only upon the said Custom; which said Action was to be tried at the Bar of, &c. by a Jury of the County of *M.* the third Day of, &c. then next following, and the Equity upon the said Plaintiff's Bill was reserved to the Court, till after the said Trial should be had as aforesaid, as by the said Order may also more fully appear; which said Trial being at the Bar of, &c. according to the Directions of the said mentioned Order: and the then Plaintiff having proved the Custom, and obtained a Verdict thereupon on his Behalf, the Court was moved on *Friday* the 10th Day of *N.* then following by the said then Plaintiff's Counsel, That in as much as the said *J. A.* Plaintiff in the said Suit, had obtained a Verdict upon the said Trial and Judgment entred thereupon, that the Possession of the Payment of the said twentieth Part of the Fish in Question might be established with the said Plaintiff in the Suit, that a Decree might be drawn

drawn up thereupon, according to the said recited Order of the 6th of *February* last past; and that the Court would be pleased to consider what Allowance should be given to the Plaintiff in that Suit for the said 20th Part of the five Years Arrears mentioned in the Bill: It was thereupon ordered by the Court, That the said Decree formerly pronounced by the Court aforesaid, should be drawn up and made absolute, and the Possession of the Payment of the twentieth Part of the Fish in Question established with the said Plaintiff in that Suit, wherein Consideration should be taken of the said Arrears, unless Cause was shewed to the contrary on, &c. *And* forasmuch as no Cause was shewed to the contrary, according to the said last recited Order, it was therefore ordered, adjudged and decreed by the Court, That the Possession of the 20th Part of the Fish taken at Sea by your Orators then Defendants, or either of them, being an Inhabitant of the Town of *S.* aforesaid, and did use the Trade of Fishing there, or the Value thereof, should be established with the said Complainant *J. E.* or his Assigns. *And* your Orators, the Defendants in that Suit, should for the future pay to the said *J. E.* or to his Assignee or Assignees, during his or their Estate in the Premises, the 20th Part of the Fish then after to be taken at Sea, or the 20th Part of the Value of the said Fish, wheresoever the same shall be taken or sold, according to the Custom before set forth in the said Bill of Complaint. *And*, as touching the Arrears thereof for the five Years next before the exhibiting of the said Bill, forasmuch as it was proved by the Plaintiff, that the said 20th Part of the Fish then in Question taken by your Orators in each of the said five Years respectively, was worth 4 *l.* which will amount to in all 40 *l.* It was therefore further ordered, adjudged and decreed by this Court, That your said Orators should respectively pay unto the said *J. E.* Plaintiff in that Suit, or to his Assignee or Assignees, the Sum of 20 *l.* a-piece in Lieu of the 20th Part of the Fish taken and sold by your Orators during the said five Years before the exhibiting of the said Bill, as by the said Bill, Answers, Pleadings, Orders and Decrees remaining of Record in, &c. may more at large

Decree made
absolute, *nisi*.

And confirmed.

Decree sign'd
appear: and inroll'd.

Averment,
That it
ought not to
bind the now
Plaintiff.

Because erro-
neous.

Errors as-
signed.
(1.)

(2.)

appear: Which Decree is since signed and inrolled in this Court. *But* your Orators do aver, and say, That they ought not to be bound thereby, nor ought any such Decree in Justice to have been made or pronounced against your Orators, nor ought the Possession of the 20th Part of the Fish taken at Sea by your Orators, or either of them, or the Value thereof (albeit they be Inhabitants of the Town of *S.* aforesaid, and do use the Trade of Fishing, and sell the same Fish) be established with the said *J. E.* or his Assigns; neither ought your Orators, or either of them for the future, to pay to the said *J. E.* or his Assignee or Assignees during his or their Estate in the Premises, or any other Time, the 20th Part of the Fish hereafter to be by them taken at Sea, or the 20th Part of the Value of the said Fish, wheresoever the same shall be taken or sold, according to the supposed Custom set forth in the said Bill: Neither ought your said Orators, or either of them, to pay unto the said *J. E.* or to his Assignee or Assignees, the Sum of 20 *l.* a-piece, or any other Sum whatsoever in Lieu of the 20th Part of the Fish taken and sold by them your said Orators, or either of them, during the five Years before the exhibiting of the said Bill, as by the said Decree is decreed and appointed, but that the same Decree is manifestly erroneous, and ought to be reversed, and for Error therein do, according to the Course of this Honourable Court, assign the Error therein as followeth, *viz.*

First, Your Orators say, and hope to maintain, That the Custom and customary Payment for Fish taken at Sea by the Inhabitants of the Town of *S.* set forth and pretended by the said *J. E.* in his said Bill of Complaint, is uncertain, unreasonable, and void both in Law and Equity; neither is there any such Custom or customary Payments due.

Secondly, Your Orators say, That the Matter directed by this Honourable Court to be tried by a Jury of *Middlesex*, as aforesaid, and the Verdict thereupon, doth not ascertain the Court, that there is such a Custom, as in the said Bill of Complaint is pretended, but only that the then Plaintiff made Proof there; which Proof by incompetent Witnesses in Reference to the Right of the Thing in Question upon the said Bill, though

though unconcerned in Reference to the Promise upon the Declaration at Law was made, and could have been disproved by your Orators.

Thirdly, That by the Order, which appointed and directed the said Trial, the Point whether *J. E.* then Complainant, could prove the pretended Custom was only in Issue: And your Orators could not then offer any Thing by way of Disproof thereof, or stand upon the Uncertainty, Unreasonableness or Illegality of the said pretended Custom.

(3.)

Fourthly, Although your Orators consented to the Trial of the said Issue directed, yet your Orators did never consent, That, if the Verdict upon the said Issue should pass against them, the Matter in Question should be decreed against them; but the said Cause stood entire upon the Equity thereof notwithstanding, and the said Issue was collateral and extraneous thereunto.

(4)

Fifthly, The said Decree it self doth establish with the said *J. E.* the then Complainant, or his Assigns, the 20th Part of the Fish taken at Sea by your Orators, or the Value thereof, which is altogether uncertain, whether with the Complainant, or with his Assigns, and whether the Possession is to be of the 20th Part, or of the Value thereof.

(5.)

Sixthly, It is thereby decreed, That your Orators should for the future pay unto the said *J. E.* or to his Assignee or Assignees, during his or their Estate in the Premises, the 20th Part of the Fish then after to be taken at Sea, or the 20th Part of the Value thereof, where-ever the same should be taken or sold, which is altogether uncertain whether it shall be paid to the said *J. E.* or to his Assigns; and whether the 20th Part of the Fish, or the Value thereof, and how the Value should be decided; and is larger, than the Proofs or the Verdict in the said Case did warrant.

(6.)

Seventhly, It is thereby also decreed, That your Orators should respectively pay unto the said *J. E.* or to his Assignee or Assignees, the Sum of 20*l.* a-piece in Lieu of the Fish taken and sold by your said Orators during the five Years before the exhibiting of the said Bill, which is altogether uncertain; also whether they should pay it to the said *J. E.* or to his Assigns; and

(7.)

and is for Fish taken and sold, and not for the Value thereof, and therefore not pursuant to the pretended Custom alledged by the Complainant in his said Bill.

(8.)

Eighthly, The said *J. E.* was not alive at the Time of the said Decree made in the said Cause against your said Orators, and so could not be bound by the said Decree, and consequently your Orators ought not to be bound thereby. For all which said Errors and Imperfections in the said Decree your Orators have brought this their Bill of Review, and ought to be relieved therein.

Conclusion.

Prayer of Reversal, &c.

And Process
ad revivend'
& *respondend'*

Another Bill of Review brought up on a former Bill of Review, whereupon a Decree was reversed.

Whereas this Bill being directed to the Lord Chancellor, G. prays that the Reversal may be reversed, and that the first Decree may stand.

In tender Consideration whereof, and for that there are divers other apparent Errors and Imperfections in the said Bill, Orders, Decree and Proceedings, by Reason whereof the same ought to be reviewed and revers'd, and ought not to bind your Orators. To the End therefore that the said Decree, and all the Proceedings thereupon, may be reviewed and reversed, and that the said *J. E.* may answer the Premises, and that your Orators may be relieved in all and singular the Premises, as in Equity and good Conscience they ought to be, your Orators pray Relief in this Honourable Court, and that the said Bill, and Decree, and Proceedings thereupon may be reviewed and revers'd: And that your Orators may be relieved therein, as in all Equity and good Conscience they ought; May it please your Lordships to grant to your Orators her Majesty's Writ of *Subpœna ad revivend' & respondend'* directed to *D. G. J. K. &c.* Assignees of the said *J. E.* commanding them, &c.

A Bill of Review for R. B. Esquire against A. B. and J. C. Administrators, with the Will annexed of S. B. decess'd.

To the Right Honourable W. Lord C. &c.

Humbly complaining, &c. setting forth (*as before*) That such a Term the Plaintiff exhibited his

Bill,

Bill, &c. (*setting forth the Substance thereof, as it is in the Decretal Order*) And that thereupon the Defendant answered, and the Plaintiff replied, and that Witnesses were examined, and their Depositions published. &c. That the Cause came on to Hearing, and was heard and decreed by the Lord Chancellor S. and afterwards reheard by him, and the Decree confirmed, &c. (*setting out the several Orders, and what was decreed in particular*) After which set forth the Petition for a Rehearing to the Lord Keeper W. and that the Cause was accordingly reheard, and that the Decree of the Reversal was made by him, (*prout the Decree*) And that that Decree is signed and enrolled; and that thereupon the now Plaintiff was constrained to prevent Proceedings upon the said Statute, to pay the Sum of - - - over and besides the said 700 l. the pretended Value of the Wines, and which was paid on granting the Injunction, as aforesaid; but that the said Statute is not yet delivered up, or vacated.

Since which Time B. the Plaintiff in the former Bill of Review is dead, having made his last Will, but no Executors thereof; or if any that they renounced, and that Letters of Administration *cum Testamento annexo* are granted to the Persons *ut supra*; And that the said Administrators have possess'd themselves of B's personal Estate, being of great Value.

That the now Plaintiff is aggrieved by the said last Decree, which reversed the Decree made by the Chancellor S. and that the said last Decree is erroneous, and ought to be reviewed and reversed.

For that it appears even by the said Decree, that there was a very ill Practice and Contrivance in the then Defendant B. in obtaining the said Statute of 2800 l. from the now Plaintiff, an Heir in the Lifetime of his Father, defeasanced for the Payment of 1400 l. at the End of forty Days after the Father's Death, and that it was given for a Parcel of Wines valued in the Bargain at 700 l. So that as it appears by the Decree, supposing the Wines to be of the Value 700 l. (which the Plaintiff doth not admit) the Defendant B. was to have double the same Sum within forty Days after the Father's Death (whom he then knew to be confined to his Chamber by Sickness, and who

Proceedings on the Original Bill, &c. recited.

Hearing, Rehearing and first Decree confirmed.

The first Bill of Review, &c. and Reversal of the former Decree. The Performance thereof, &c.

Death of the then Plaintiff, &c.

That the last Decree is erroneous.

Errors assigned,

Being on a corrupt Bargain.

And contrary to former Precedents.

Prayer of Reversal, &c.

And Subpœna ad revivend' &c.

A Plea and Demurrer to a Bill of Review.

who died soon after.) Which Bargain and Contract appears in it self without any other Evidence to be fraudulent and corrupt, and such as this Court hath always granted Relief against, and discountenanced; and the said late Lord Keeper W. himself, soon after the making of this Decree upon another Rehearing in the like Case between the Plaintiff and one T. made on a Contract for a Parcel of, &c. confirm'd the Lord S's Decree formerly made to the same Effect with the said Decree made by the said Lord S. in this Case. And the said late Lord Keeper W. did afterwards in other Cases make the like Decree for setting aside fraudulent and unreasonable Bargains and Purchases. Wherefore, and for that the Decree is apparently erroneous and unjust, and contrary to the Precedents of this Court, as well ancient as modern, the now Plaintiff humbly conceives, and is advised, That the same ought to be reviewed and reversed; and that the first Decree made by the Lord S. ought to stand and be confirmed, and that your Orator ought to be repaid the same Sum with Interest, which he paid to the said B. who hath left Assets, &c. To the End therefore that the said last Decree may be reviewed and reversed, and the said Money repaid with Damages; and to that End that the said Administrators may either admit Assets, or discover B's personal Estate, and the Particulars and Value thereof; and that your Orator may be relieved in the Premises according to Justice, &c. May it please your Lordship to grant her Majesty's Writ of Subpœna ad revivend' & ad respondend', directed, &c.

The joynt and severall Plea and Demurrer of J. C. and C. C. Defendants, to the Bill of Review of J. H. Complainant.

THE said Defendants by Protestation, &c. say, they are advised by their Counsel, That the said Bill of Complaint is irregular and insufficient, and such, whereunto they are not, by the Rules of this Honourable Court, compellable to answer, the Scope and Substance thereof of the Complainant's own Shewing appearing to be, That these Defendants did heretofore

tofore exhibit a Bill into this Court against, &c. setting forth, That, &c. Whereunto these Defendants do demur, and for Causes of Demurrer shew, That it doth not appear, as by the Rules of this Court it ought, before the Bill of Review be allowed, that the now Complainant hath obtained any Leave or Licence of this Honourable Court to exhibit his Bill of Review; *nor* that the said Complainant hath entred into a Recognizance, with Sureties, before a Matter of this Court, for Satisfaction of the Defendant's Costs and Damages, in case the Bill of Review be dismiss'd; nor given Notice to these Defendants of his so doing. *Nor* that the said Complainant hath *performed* the said Decree, or yielded any *Obedience* thereunto, either by paying the Money, bringing in the Deeds, &c. Wherefore, and for that it doth not appear that the Complainant hath observed the Rules of this Court in any of the Particulars aforesaid. *And* for that it doth appear of the Complainant's own shewing, That the said Decree complained of by him, was regularly had, and made upon a full Hearing; *And* for that there is no Error in Law set forth in the said Bill of Review to be appearing in the Body of the said Decree, which is any way sufficient to induce this Honourable Court to reverse the said Decree, the supposed Errors in the Law therein assigned, being meerly specious and leading, principally to draw again into Examination Matters of Fact already examined in the first Suit: *And* for that, as of the Complainant's own shewing it appears, the very same Matters were all fully in Issue in the said Case, and duly debated and given in Evidence at the Time of the Hearing thereof, when the said Decree was made. *And* for that the Complainant, for ought appears by the said Bill, hath not so much as alledged any new Matter at all, which was not in Issue before, whereby to induce this Honourable Court to rehear the said Cause, and change the Matters decreed, save only a meer Pretence, without any Oath made of the Truth thereof (as the Rules of this Court require) That it is lately come to his Knowledge, that his Father and Mother did levy a Fine, &c. To the Use, &c. which if admitted to be true, the Complainant's Ignorance thereof is no Ground at all for a Bill

Causes of
Demurrer.

Note, most of
the Causes of
Demurrer to
a Bill of Re-
view are here
assigned.

Bill of Review, or to induce this Court to reverse the said Decree, being such an Allegation as may be made in all Cases whatsoever; but is not such *new Matter* whereof the Complainant could not by any Possibility have had Notice thereof at the Time of the making of the said Decree, as by the Rules of this Court is in that Case provided. *And* if such Fine, &c. was levied, &c. it appears it was subsequent to the said Settlement, upon which the Decree is grounded; and there is nothing alledged in the said Bill, which ought to alter the said Decree in any Particular; but the same Decree, as it was made upon great Deliberation, so it was upon very just and equitable Grounds, notwithstanding any Thing in the said Bill alledged, which tendeth only to bring into Examination the same Things, which were heard before, and settled and decreed as aforesaid, *Therefore*, and for divers other Imperfections in the said Bill appearing, these Defendants do demur and abide in the Law to the Complainant's said Bill of Review, and humbly pray the Judgment of this Honourable Court, Whether they shall be enforced to make any other Answer thereto, or the Complainant be permitted to proceed any further thereupon: And pray to be hence dismissed, &c.

Note, Bills of Reversal, in Nature of Bills of Review, are sometimes brought in this Court against Decrees and other Proceedings in Ireland, and limited Jurisdictions in England, according to the ensuing Form, viz.

A Bill to reverse a Decree made in the Court of Chancery in Ireland.

Humbly complaining, sheweth unto your Lordship G. D. of L. in the County of *London-Derry*, within the Kingdom of *Ireland*, Esq; That in the Year, &c. your said Orator did take up from *J. N. of L. D.* in the said Kingdom of *Ireland*, in Goods, Commodities and some Monies, to the Value of 530*l.* of currant Money of *Great Britain*, and for securing the Payment of the same, with lawful Interest, at a certain Day then to come, and since past, unto the said *J. N.* his Executors, &c. did mortgage to the said *J. N.* certain Lands,

Lands, &c. in, &c. and at the same Time entred into a Statute-Staple to the said *J. N.* his Executors, &c. in the Penalty of . . . *prout* the said Deed of Mortgage and Statute, &c. And further sheweth, That the said *J. N.* or some in Trust for him, received of the Profits of the said Lands the Sum of 257 *l.* towards Satisfaction of the said 530 *l.* so taken up as aforesaid, and afterwards at such a Time paid the said *J. N.* 65 *l.* towards further Satisfaction thereof; but your Orator for some Years after not being able to satisfy the Remainder of the said 530 *l.* was in the Year, &c. by indirect Means used by the said *J. N.* compelled to accmpt with him, and to execute a new Deed of Mortgage to him of other Lands in the said Kingdom of *Ireland*, for the securing of what was due upon the first Deed of Mortgage and Statute-Staple, so executed as aforesaid, and upon no other Consideration whatsoever, whereby your Orator became obliged to pay the said *J. N.* &c. within a short Time after the intire Sum of 750 *l.* has by the said Deed of Mortgage so extorted from your Orator (*and refers to it*) though the first Mortgage-Deed and Statute were only for Payment of 533 *l.* and of which the said *J. N.* had received out of the said Estate 257 *l.* or if taken for Interest, as is pretended, was more than 24 *l. per Cent.* contrary to all Equity and good Conscience, and the known Laws of the Land. And that as soon as your Orator had executed the said later Deed of Mortgage to the said *J. N.* for the farther Sum of 750 *l.* principal Money as aforesaid, he refused to deliver up or cancel the said first Deed of Mortgage, or to release the said Statute of 1160 *l.* so entred into, &c. And further, That in Pursuance of the said later Agreement by that second Deed of Mortgage so entred into, and extorted from your Orator as aforesaid, your said Orator did pay or cause to be paid to the said *J. N.* or his Order the full Sum of 550 *l.* by 50 *l. per Month*; so that by a just and reasonable Computation the said Original Sum of 530 *l.* and legal Interest for the same, was not only fully paid, but also more than the Sum of 100 *l.* was over-paid. Notwithstanding all which, the said *J. N.* refuses to cancel or deliver up the said Deed, and still detains not only the Original Mortgage-Deed

Deed and Statute-Staple, but also the later Deed made for the Payment of the said 750*l.* as aforesaid: By which indirect Proceedings it remains in the Power and at the Pleasure of the said *J. W.* his Executors, &c. at any Time to extend your Orator's Estate by Vertue of the first Deed of Mortgage and Statute-Staple, and to compel your Orator under Pain of losing all manner of Equity of Redemption to pay the Money contracted and engaged to be paid by the last Deed of Mortgage, though the principal Debt, and all Interest for the same be in good Conscience and Equity fully satisfied. and paid, and 100*l.* over and above.

And further sheweth, That in the Year, &c. your Orator having received an Assignment from the Earl of *R.* on *J. Cary* Esq; for the Payment of 800*l.* in the Space of four Years by several Payments, your Orator did by Letter of Attorney, &c. assign the same over to the said *J. N.* and appointed him to receive the same; who accordingly did receive the same Half Yearly, viz. 100*l.* Half Yearly, so that he the said *J. N.* had in the Year, &c. receiv'd of the said *J. C.* by Vertue thereof, the Sum of 800*l.* by such several Half Yearly Payments: All which said several Sums of Money the said *J. N.* hath receiv'd for your Orator's Use, and upon your Orator's Account, and is liable to account for the same to your Orator, and for the Interest thereof, which at the lowest Computation amounts to the Sum of, &c. and which your Orator hoped the said *J. N.* would long since have done, he having been oftentimes in a Friendly Manner requested by your Orator so to do. *But so it is,* may it please your Lordship, That in the Year, &c. Dame *A. P.* then Relict and Widow of Sir *T. P.* late of *L. D.* aforesaid, deceas'd, having obtain'd a Decree in the Court of *Chancery* in *Ireland*, against Part of your Orator's Estate in that Kingdom, for the Sum of 500*l.* for Arrears of her Jointure, and 80*l.* *per Annum* to be paid to her during her Life, out of your Orator's Estate there, the said *J. N.* did thereupon undertake in Trust for your Orator, to compound with her for the Arrears of her Jointure so decreed upon your Orator's Estate in *Ireland*, as aforesaid, for the Benefit and Advantage of your Orator; and accordingly did on Behalf of your Orator, agree
and

and compound with her for 600 *l.* to discharge the said Decree and Incumbrance: But the said *J. N.* was no sooner intituled to the said Arrears by Grant from the said *A. P.* tho' in Trust for your Orator, and in Discharge of the said Decree, but contrary to all Equity, &c. he unjustly ingrossed to himself the Bargain and Benefit of the said Composition, and went about to extend your Orator's Estate by vertue of the said Decree, whereupon your Orator was compelled to come to an Agreement to pay the said *J. N.* 800 *l.* by 50 *l.* a Month, in Consideration he would assign the Benefit of the said Decree to your Orator, and accordingly gave Bonds, &c. for the Payment thereof: But the said *J. N.* hath since refused to assign the said Decree, &c. tho' your Orator in pursuance of the said Agreement, hath paid him the Sum of 250 *l.* as Part of the said 800 *l.*

And further, That taking Advantage of your Orator's being beyond the Seas out of the Kingdom, he sued your Orator in the Court of *Chancery* there, and obtain'd a Decree *ex parte* against your Orator for 2917 *l.* 12 *s.* upon Pretence of Arrears due to the said *A. P.* without making any Discount, or taking any Notice of what he stood indebted to your Orator, being 3527 *l.* 12 *s.* as aforesaid: By Pretence of which said last mentioned Decree, he hath taken Possession of your Orator's whole Estate in that Kingdom, and by the Power of the Sheriffs there turn'd your Orator's Wife and Children out of Doors, compell'd your Orator's Tenants to attorn to him, and by that Means receiv'd out of your Orator's Estate many Thousands of Pounds more than was or could be due to him, though your Orator's Demands be not allow'd, and likewise shews several Consignments of Goods to the said *J. N.* and Monies receiv'd by him on Bills of Exchange payable to your Orator, amounting to 1500 *l.* and which he refuses to account for to your Orator; and that your Orator since the late happy Revolution here, and Reduction of the said Kingdom of *Ireland*, being wrought upon and prevail'd with by the People of *London-Derry* to come over into *England*, and sollicite his present Majesty on their Behalf, and for that your Orator and Family are now settled here, and cannot go over into *Ireland*

Causes of
Equity.

The Plain-
tiff's Ab-
sence, &c.

D d

by

The former
Decree *ex*
parte, and
erroneous.

Errors as-
signed.

by reason of several Affairs of his own, and other Persons, wherein he is intrusted, do require his daily Attendance at the Court here in *England*, the said *J. N.* taking Advantage thereof endeavours in the Absence of your Orator, not only to revive the Decree, which he obtain'd *ex parte* against your Orator, as aforesaid, notwithstanding the said Decree is erroneous in the Particulars herein-after set forth:

First, Because it was obtain'd *ex parte*, when neither your Orator, his Clerk in Court or Solicitor, were present.

Secondly, Because the Decree was founded upon a Report made *ex parte*, and that Report made upon an account stated *ex parte* also.

Thirdly, Because the said Account was falsely computed both in Matter and Form; and shew *how so* in Particular, (and several other Exceptions to the Report made *ex parte*, upon which the said Decree was founded.)

And further, that the said *J. N.* sues the Complainant upon both the said Mortgage-Deeds and Statute-Staple, and also upon the Bond, &c. whereas the same ought long since to have been delivered up to the Plaintiff to be cancelled: But the said *J. N.* the better to colour his unjust Proceedings against the Plaintiff, pretends and gives out, That your Orator hath owned before a Master in *Chancery* in that Kingdom, that there is 2000 *l.* due to the said *J. N.* upon the Decree *ex parte* obtain'd against the Plaintiff, for the Arrears of *A. P.*'s Jointure, as aforesaid: And that the Plaintiff hath solemnly promis'd not to hinder the said *J. N.* from receiving the same out of the Plaintiff's Estate there, or to seek for any Abatement of the same, though the Plaintiff avers and hopes to prove, That the said *J. N.* is indebted to the Plaintiff in the Sum of 7387 *l.* and upwards, and that the Money due upon the Decree for the Arrears of *A. P.*'s Jointure was long since paid and satisfied, with an Overplus of some Thousands of Pounds. All which Actings, &c. are contrary to Equity, &c. and tend to your Orator's great Oppression, and the utter Ruin of himself, his Wife and Family. In tender Consideration whereof, and forasmuch, &c.

(as

(as usual;) and for that your Orator wholly relies on the Oath of the said *J. N.* for a full Discovery of the Truth of all and singular the Premises, who when thereunto called this Honourable Court, will, as your Orator hopes, set forth and discover the same: To the End therefore that the said *J. N.* may, upon his Corporal Oath, discover whether in the Year, &c. your Orator did not mortgage, and for what Sum of Money the said Lands, &c. in, &c. (and so by way of Interrogatory recite the Substance of what is before set forth.) And that he may shew Cause if he can, why he should not come to an Account with your Orator for the same, and for all such other Sum or Sums of Money, as from Time to Time he hath received for or in Trust, or to the Use, or on Account of your Orator; and why he should not cancel or deliver up to your Orator the three several Deeds of Mortgage before mentioned, and discharge the said Statute-Staple, and acknowledge Satisfaction for the same upon Record, and that he may be compelled so to do by the Decree of this Honourable Court, and may answer all and singular other the Premises, as if they were herein again repeated and interrogated, and that your Orator may be relieved therein according to Equity and good Conscience: *May it please your Lordship to grant to your Orator their Majesties most gracious Writ of Injunction for stay of the Defendant's farther Proceedings in Ireland, and Writ of Subpœna to be directed to the said J. N. and others thereby commanding him and them, &c.*

Injunction
prayed, &c.

If either Party thinks himself aggrieved by a Decree of this Court, he may by Petition appeal to the Lords in Parliament, and have the Cause reheard there; and they will affirm, alter or reverse the Decree, as they see fit.

Of Appeals
in Parli-
ament, in
what Causes.

Sometimes a *Rehearing* before the Chancellor of a Cause, that has been heard before the Master of the Rolls, is called an *Appeal*, but improperly. *Vide of Rehearing, ante 343, 385, 390, &c.*

And this may be done either before or after the Decree is executed.

At what
Time.

How brought
on depositing
20 l.

By an Order of the 12th of *May* 1686. no Rehearing or Appeal was to be, except the *Appellant* should deposit 5 l. to recompence the other Party his Costs, in case he fail'd in his Appeal; but this is now made 20 l. *Vide ante*, 343, 344.

All Appeals brought in Parliament ought to be signed by two noted Councils, and can only be argued there by two Councils of each Side.

Appeals from
Commissioners of Charitable Uses.

See *Cases in Parliament*, pag. 110. an Appeal from a Decree, which over-ruled Exceptions taken by the Appellant to a Decree made by the Commissioners for Charitable Uses concerning a Gift by Will; and the same was received, and the Parties ordered to answer thereunto.

From a Sentence of the Delegates.

And note, 'Tis there queried, whether an Appeal does not lie upon a Sentence by the Delegates, as well as on a Decree of *Chancery* upon a Decree of Commissioners for Charitable Uses.

From Decrees of Dismission in *Chancery*.

And see *ibid.* pag. 18, 69, 76, 137, 140, 157, 198. Appeals from Decrees of *Dismission*, and other Decrees in the Court of *Chancery*, and some of those Decrees of Dismission reversed, and others affirm'd.

From a Decree in the *Exchequer*.

And *ibid* 192. an Appeal from a Decree in the Court of *Exchequer*, and the Decree affirm'd.

Note also, The Case of the Governor and Society of *Ulster* against the Bishop of *Derry*. *Ibid.* pag. 78.

From the *Chancery* and Parliament of *Ireland*.

The Bishop had appealed to the House of Lords in *Ireland*, from an Order or Decree of the Court of *Chancery* there, touching certain Lands in the County and Liberties of *London-Derry*: And the Governor, &c. thereupon appealed to the House of Lords here, and in their Appeal, (after a Recital of the Proceedings in *Chancery* there, and the Merits of the Cause) they set forth *inter alia*:

That the Appellants are advised no Appeal lies to the House of Lords in Ireland from the Court of Chancery there; but that all Appeals from thence ought to be immediately to their Lordships here, being the Supreme Judicature as well for Matters arising in Ireland, as in this Kingdom: And therefore in the Conclusion thereof pray, That an Order might be made for the said Bishop to appear, and put in his Answer thereto, and that the Matter might

be heard before their Lordships here; and that the Petitioners might receive such Relief as should be agreeable to their Lordships great Wisdom and Justice, &c.

And after hearing Council touching the Point of Jurisdiction in this Case, it was ordered and adjudged by the Lords Spiritual and Temporal here, That the said Appeal of the Bishop of Derry to the House of Lords of Ireland, from the Decree or Order of the Court of Chancery there, was *coram non Judice*, and that all the Proceedings thereupon are null and void; and that the Court of Chancery in Ireland ought to proceed in the said Cause as if no such Appeal had been to the House of Lords there: And if either of the said Parties do find themselves aggrieved by the said Decree, or Order of the Chancery of Ireland, they are at Liberty to pursue their proper Remedy by way of Appeal to this House.

The Form of an Appeal in Parliament is thus, viz.

E. W. Gent. Appellant: H. P. J. L. W. N. J. C.
W. L. &c. Defendants.

The humble Petition and Appeal of E. W. Gent.
Appellant.

To the Right Honourable the Lords Spiritual and Temporal
in Parliament assembled.

Most humbly sheweth,

THAT your Petitioner about *Trinity-Term*, in the Year of your Lord 1689. exhibited his Bill of Complaint into the High Court of Chancery, thereby setting forth, That your Petitioner about the Year 1682. being then under the Displeasure of the Government, was forced to withdraw himself, and for the Support of his Family in his Absence, left with the Defendant W. L. 500 l. and shortly after took a Bond for the same in the Name of the Defendant J. C. in trust: And that the said W. L. soon after entred into Copartnership in certain Iron-Works and Mills at C. in the County of K. with his Father and Brother, and the other Defendants; and a Lease of the said Mills was purchased

An Appeal upon a Dismission in Chancery.

purchased of one *P.* by the joint Stock of the said Defendants and Copartners, and the said *W. L.* brought into the said Stock above 1900*l.* That in the Year 1685. the said *W. L.* became a Bankrupt; and the said Copartners pretending Differences in their Accounts did about the Year 1685. exhibit Bills against each other in the said Court of *Chancery*; and after Answers put in to each others Bills, by Contrivance amongst themselves to defraud the Creditors of the said *W. L.* they the said *W. L.* and his said Copartners entred into an Order of Court by consent, to refer all Matters in difference between them to the final Award and Arbitrament of four Arbitrators; and in case they agreed not by a Day fixed, then the same to be referred to an Umpire, one *J. T.* the Uncle and Brother of them the said Copartners, to be ratified and confirmed by the Decree of that Court: That the said Arbitrators made no Award therein, as was before contrived by the said Copartners they should not, to the Intent the said Umpire might have the same in his Hands, the better to find (protect) the Estate of the Bankrupt in the Hands of the rest of the Copartners, his Father and Brother: And the said Bill further charged, That the said Umpire made an unjust Award, to the Prejudice of the said Creditors of the said *W. L.* at least 1900*l.* which Award was confirm'd by the Decree of the said Court, though the said *J. L.* was a Bankrupt long before the said Decree, and before any Award made by the said *J. T.* and a Commission of Bankrupt was issued against the said *W.* and he prov'd a Bankrupt before the major Part of the Commissioners therein named, *viz.* *T. G. R. B.* and *J. G.* Esquires, the other Defendants, and was indebted to your Petitioner and others, in divers great Sums of Money; and they the said Commissioners made an Assignment of the said Mills and Stock of the said Mills, and Stock of the said Defendant *W. L.* then in the Hands of the Defendants and Partners *H. P.* and *J. L.* to one *J. C.* who accepted the same, and received Contribution-Money of your Petitioner, and others the Creditors, at 1*s.* 6*d.* in each Pound: And the said Defendant *J. C.* by the same Indenture of Assignment covenanted and undertook to sue for and re-

cover the said Mills, Stock and Estate, so assigned to him, for the Good of the Creditors of the Defendant *W. L.* and that the said *J. C.* being in Combination with the Defendants *H. P. &c.* and the said *W. L.* the Bankrupt refused to Act therein, notwithstanding the Trust reposed in him by the said Commissioners, and his Covenants in the said Assignment; and the Commissioners refused to force him thereto, or to call the said *J. C.* to account: And that the said Defendants *H. P.* and *J. L.* and the said *J. C.* had gotten the Books of Account of the said Copartnership, and the Lease of the said Mills, and other the Deeds and Writings, that shewed the said *W. L.*'s Estate, and the said Assignment into their Hands, so that your Petitioner was remediless at Law; and that the said *H. P.* and *J. L.* set up the said Decree to hinder your Petitioner from having an Account of *W. L.*'s Estate; and therefore your Petitioner prayed by his said Bill, That in regard the said *W. L.* was a Bankrupt before the Decree inrolled, or the Award made, and for that your Petitioner was no Party, or privy to that Decree, but a Stranger thereto, and a real Creditor for 500*l.* and Interest; Therefore that your Petitioner might be let into the Account notwithstanding the said Decree; That after all the Defendants had answered your Petitioner's said Bill, and the said Defendants *H. P.* and *J. L.* had only pleaded the said Decree in that Court against your Petitioner's said Bill, which was ordered to stand for Answers, the same came to be heard the 15th of *January* last, before the present Lords Commissioners for the Custody of the Great Seal of *England*: But though the Matters did appear to be as aforesaid, yet their Lordships did order your Petitioner's said Bill should stand dismiss'd without any Relief; which said Order for Dismission is since inrolled in the said Court, whereby your Petitioner hath apparent Damage, contrary to all Law and Equity, as your Petitioner is advised: Your Petitioner therefore *appeals* from the said Order and Inrolment, and Proceedings in the said Court of *Chancery* for Dismission of your Petitioner's said Bill to your Lordships in Parliament; and most humbly prays, that the said Defendants may be appointed a short Day to answer

Prayers of
the Bill in
Chancery.

Pleas and An-
swers of the
Defendants.

Hearing.

Bill dismiss'd
and the Or-
der inrolled.
Appeal there-
from.

Of Appeals in Parliament, &c.

And from
another Or-
der or De-
cree.

all and singular the said Premises before your Lordships, and that the same Order may be reversed; and that the said Decree made 23 *Martii* 1685, between the Defendants *H. P. J. L. W. N.* and the said *W. L.* and *e contra*, may be also revers'd, as far as it hinders your Petitioner from having an Account of the Bankrupt the said Defendant *W. L.*'s Estate, in the said Defendants Hands; and that your Petitioner's said Bill may be retained in the said Court, and the Matters therein prayed, decreed to your Petitioner, or such other Relief, as to this Noble and Honourable House shall seem meet.

And your Petitioner shall ever pray, &c.

J. H.
W. B.

E. W.

H. B. Executor of G. B. deceased, Plaintiff; J. D. Defendant.

To the Right Honourable the Lords Spiritual, &c.

The humble Petition and Appeal of the Defendant,

Humbly sheweth,

Another
Form of an
Appeal.

THAT the Testator and Appellant, having carried on the Trade of, &c. entred into Articles of Co-partnership for the better Management of the same for five Years, with an equal Stock, or Sum in the said Trade, and all Things relating to the said Trade were to be done by mutual Consent, and that the Appellant should keep *B.* and *G.* Fairs, and the Testator *H. S.* and *L.* Fairs; and that each Partner, at his Return from the respective Fairs, should give and make to the other just and true Accounts of their Transactions and Dealings in Trade at such Fairs.

And also agreed, That neither Party should take an Apprentice without Consent of the other, nor without good Security for such Apprentice's Honesty; and that all Losses happening to the said joint Trade under such Conditions, should, during the said five Years, be equally born by the said Copartners.

And

And also, That a general Account should once every Year in *January*, be made up; and that if either Party died before the said five Years expired, the Survivor should take the whole Stock and Estate, and pay the Debts; and to the Executors, &c. of the Deceased, one Moiety of the whole, as it should appear on the said Stated Account, at three several Payments; the first to be at the End of six Months after such Decease, and so allowing six Months for each of the other Payments; and that at the End of five Years, the Partners were to secure the Payments of the Debts due from them, and then there should be an equal Partition made of the whole Stock and Estate: But if either died during the five Years, the Survivor should take the whole Stock and Estate, and pay the Deceased's Executors, &c. one Moiety of what was due on the last stated Account: And that if at the End of the said five Years, they did not agree to continue the said Copartnership for any longer Term, then the said Copartnership should continue three Months and no longer, for the dividing and disposing of Wares and Merchandizes, and settling their Accounts: Any Thing to the contrary notwithstanding.

Which Articles continued in force till the 30th of *September 1697*. at which Time a Partition was to have been made, and the Partnership dissolved, and a Writing was prepared for that Purpose: But the Appellant was afterward prevailed with to continue on the same by Bonds for one Year, which expired the 11th of *January 1698*. and then the Appellant taking Notice that many of the Debts mentioned in the last stated Account of the 1st of *January 1698*. were good Debts, particularly a Debt of 376*l.* from *T. D.* and several others, to the Amount of 1400*l.* or thereabouts, being Debts made by the Testator in his Way of Trade, were desperate or doubtful Debts, and that great Loss might happen to the Appellant thereby, in case the Testator (who was then sickly and infirm) should happen to die during the Partnership; the Appellant did therefore propose, and it was agreed beswixt them, that new Articles should be made, by which each Party, their Executors, &c. should have Profit and Loss alike; and that

that the surviving Partner should not be over-charged, or make good to the Executors, &c. of the Deceased, his Share, as by the former Articles was directed, and Instructions were given to prepare such new Articles accordingly: But in regard the Appellant was then going to *Bristol Fair*, and the new Articles not ready, it was proposed and agreed, that the said Partnership should be continued for six Weeks only, by which time the Appellant might be return'd, and the new Articles finished, which was left to the Testator to get done; and thereupon a Bond was given of 15 *January* 1698. to continue the Partnership till the 1st of *March* following upon the old Articles, (Notice being taken in the Condition that the Parties had agreed to new Articles) which, by reason of the Appellant's going to *Bristol Fair*, could not then be perfected, and at his Return the Testator was ill, and so continu'd till 27 *Junii* 1699. when he died: By reason of whose Sickness the said new Articles were delayed, and not executed; and the Partnership being determin'd in the Life-time of the Testator, the Appellant conceived the whole Estate in Trade ought to be divided, and that each Party should have Profit and Loss alike; and was advised, he ought not to be charged with the Balance of the last Account, 1400 *l.* of the Debts mentioned as good Debts in that Account, being really desperate, and made only by the Testator; and also, there being Errors and Miscalculations therein to the Amount of 500 *l.*

The Bill set forth.

That the said *H. B.* as Executor of the said Testator, exhibited his Bill in *Chancery* against the Appellant, setting forth the said old Articles of Copartnership, and that thereby once in the Year, in *January*, a general Account should be made up, and stated in two several Books, and each Party to subscribe one, and that if during the Partnership either of the Parties died, the Survivor should take to his own Use all the Stock, and make good to the Deceased's Executors his Share, according to the last Account stated; and that in *January*, 1698. an Account was so stated, and the Testator's Share then amounted to 5529. and the said *H. B.* being his Executor, prayed to have the said 5529 *l.* decreed to him, whereto the Appellant by his

And Answer.

answer

Answer set forth the several Matters herein before alledged, and offered an Account of the Trade, and to answer the Testator's Share, according to Profit and Loss, the said Articles being determined, and the Debts contracted by the Testator, and reckoned by him as good, proving at that Time to be desperate.

December 1. 1700. the Cause was heard in *Chancery*, and it was decreed, That the Account should be taken according to the old Articles, and that the Appellant should make good the 5529 *l.* notwithstanding there were such bad Debts, and directed Sir R. H. to take the Account, and the Appellant to pay Interest according to the Articles. Hearing and Decree.

May 10. 1701. the Cause came to be reheard, and the Court being then apprised of the Case ordered, That the Master should proceed to take the Account in Question both Ways, *viz.* from the Foot of the stated Account, and from the Testator's Death, and was to compute Interest from the respective Times of Payment, and also to take an Account, as if no Account had been made, and of all such Loss, as happen'd in Trade within the Balance of the said stated Account, and after the Report the Court would give further Directions. Rehearing.

February 21. 1701. Mr. B. obtained a Report *ex parte* from the said Master, who having thereby charged all the bad Debts made by the Testator on the Appellant, and Interest upon Interest, brought the Appellant indebted to the Estate of the Testator above the Sum of 4000 *l.* A Report *ex parte*.

May 5. 1702. the said Master, on Hearing all the Parties, according to the Order of 10 *May* 1701. certified, That the said Copartnership determined on the first of *March*, 1698. before which Time a general Account of all Manner of Dealings in Copartnership was made and stated 1 *January* 1698. and after a due Discount made of the Errors, bad Debts, and Payments made by the Appellant, there was but the Sum of 980 *l.* due to the said H. B. which the Appellant submitted to pay. A second Report.

Decem-

Hearing
thereupon.

Reasons of
the Appeal.

December 16. 1702. the Cause coming again to be heard, the Court continued in their first Opinions, and confirmed the Order of 1 *December, 1700.* and discharged both the said Reports.

Now inasmuch as the Decree of the said Court of *Chancery* being grounded upon a Supposition that the said Copartnership was in Being, and continued till the Death of the said *G. B.* and that the Trade in Question was carried on thereupon, the Appellant is thereby damnified about 2000 *l.* and is advised, that the said Decree is unjust, and ought to be reversed, it appearing on the Foot of the old Articles of Copartnership, and by the Accounts and Reports in *Chancery*, that the said Copartnership was fully determined in the Testator's Life-time, and that by the true Intent of the said Articles, an equal Division of the Stock and Debts, as well seperate as desperate, was to be made at the End of three Months after the Term of five Years, and the Covenant to charge the surviving Partner to make good the Balance of the last Account was, if either Partner died during the Continuance of the Copartnership, which neither did; and your Petitioner is advised, that the said Decree is also unjust, being to make good not only the bad Debts contracted by the said Testator, but also all such Losses as happened to the Copartnership by Reason of ill Servants taken by the said Testator, who took one *W. B.* a Servant without Security, and he after *Christmas, 1698.* defrauded the Partnership of at least 317 *l. 10 s.* whereby the Appellant is damnified one Moiety of the said Sum; and also the said Appellant is by the said Decree ordered to pay Interest from the Time of Payment in the Articles for the whole Money, when it was an Account current; and it is proved in the Case, That the Appellant kept the Money dead, and always in his Hands.

And therefore the said Appellant humbly appeals from the said Decree in *Chancery* to this Honourable House, and humbly hopes, that the same shall be reversed and set aside, and hopes, that he shall not be charged or compelled to make good the Testator's Share, according as the same was computed in the last stated

stated Account, for that by the Letter and true Meaning of the said Articles, the Partnership (as he is advised) determined in the Life-time of the Testator, and that an equal Division ought to be made of the whole, and each to have Profit and Loss alike, which the Appellant submits to make good; and humbly hopes your Lordships will be pleased to order Summons to the said G. B. to appear before your Lordships, and to answer the Premises by a Day for that Purpose to be appointed by this honourable House; and that in the mean Time, and until your Lordships further Order, all Proceedings on the said Decree or decretal Orders may be stayed.

Tho. Trevor.
W. Whitlock.

J. D.

*The humble Answer of H. B. Gen. Executor of
G. B. his Father deceased, to the Petition
and Appeal of J. D. Appellant, against a
Decree made in the Court of Chancery.*

THIS Respondent saith, That on the 20th of September 1692. the Appellant and this Respondent's Testator entred into Indentures of Copartnership for the carrying on the said Trade of, &c. for the Term of five Years, from the Day of the Date thereof, in which said Indenture it is recited, That the Ready-Money, Goods and good Debts then owing to the said Partnership were 4000 l. and the desperate Debts were reckoned at 1400 l. and it is thereby agreed, That whatever Sums of Money or Stock, either of the said Partners should add or put into the said joint Trade over and above their joint Stock, that then was therein, he should be allowed the same out of the said joint Stock, and that a general Account should yearly be made up in January, and that in every such Account they should distinguish between and set apart from each other the Debts owing to them, which they should account good, and such as they should reckon desperate, which (in case either should die)

The Answer
to the said
Appeal.

Of Appeals in Parliament, &c.

die) should solely appertain to the other Copartner, to make good what Loss or Damage might happen in any of those Debts then accounted good; and the said Partners were to enter the Particulars of such Accounts in Books to be signed; and that upon finishing their last Account at the End of five Years, they should make a just and equal Partition and Assignment of all their whole Stock and Estate then in Partnership, to be equally divided between them; and that in Case either of them should die before the Expiration of the said Term of five Years, the surviving Copartner, his Executors, should have and enjoy to their own Use for ever, all the whole Stock, Estate, Wares, Goods, Debts, and other Things, which at the Time of the Partner's so dying should be in joint Trade and Copartnership, as well of him so dying, as of him that should survive; and that, in Consideration thereof, the Survivor, his Executors, &c. should forthwith pay or secure all Debts and Duties, which should be due and owing upon the joint Account to any Person at the Death of the Party so deceased, and also take upon him the Care and Education of such Apprentice and Apprentices employed in the said joint Trade, as the Partner deceased should have at the Time of his Death, and also pay and satisfy to the Executors, &c. of the Party deceased one Moiety of the Stock, Estate, &c. as the same did appear to be on the last Account preceding the Death of the Party deceased (the desperate Debts belonging to the Survivor to make good what Loss or Damage might happen or come to the Estate then accounted good, as aforesaid) the said Moiety to be paid to the Executors, &c. of the Party deceased, within eighteen Months after such Decease by three Payments, the first to be made within six Months after, &c. and that, if at the End of the said Copartnership the said Copartners should not be minded to continue the same Copartnership any longer, which, according to the Course of Time, would end the 20th of *September*, 1697. that then the said Copartnership should continue to the 30th of *December*, 1697. and no longer, for dividing and disposing of their Wares, &c. and stating and settling their Debts and Accounts.

And

And this Respondent doth deny that it any way appears by any Proofs taken in the Cause, that at the End of the said five Years any Partition was intended to be made, or the said Partnership dissolved, but on the contrary the said Parties were so far from breaking off the said Partnership, that by their mutual Consent they did the 15th of *January*, 1797. enter into, each to the other, several Bonds of the Penalty of 10000 *l.* the Condition thereof reciting, That the said five Years being expired, they had agreed, and did continue the said Partnership until the 30th of *December* following, under the same Conditions, Covenants, and Agreements, as were contained in the said Indenture of Copartnership.

And this Respondent saith, That the said Copartners did accordingly continue the said Copartnership under the same Covenants and Agreements, as in the said Indenture until the said 30th of *December*, and afterwards, and that on the first of *January* 1698. they did, according to the said Covenants and Agreements, make and state an Account of the said Copartnership, by which it doth appear, and so the Appellant hath acknowledged under his Hand and Seal, That this Respondent's Testator had then in Stock good Debts, Money and Wares, to the Value of 5529 *l.* and the said Copartners being minded to continue on the said Copartnership, under the same Agreements and Covenants, did on the 11th of *January*, 1698. again enter into new Bonds to each other, of the Penalty of 10000 *l.* the Condition thereof reciting the said Indenture and last mentioned Bonds; and further, That the said Copartners had agreed to continue the said Copartnership for a longer Time, but by Reason the Appellant was to go to *Bristol* Fair, and the Articles could not be made ready to execute before the said Journey, if therefore they should continue and keep their said Copartnership until the first of *March* then next, under the same Conditions and Covenants, as in the said Indenture of Copartnership, then the said Bonds to be void. And this Respondent denies that the said Appellant did, during the Life-time of the said

said *G. B.* the other Copartner, take any Notice that any of the Debts in the said last stated Account reckoned good Debts, proved desperate or bad Debts, and that thereupon it was agreed, new Articles of Partnership should be made, whereby each Party should have Profit and Loss alike, &c. (*as in the Appeal.*) But saith, That the said Copartners did continue the said Trade in Copartnership under the Covenants and Agreements in the said Indenture of Copartnership, until the Death of this Respondent's Father, the said *G. B.* which happened about the 29th of *January* 1699. And it doth plainly appear by Proofs in the Cause, That the said Partners did this in order to continue the said Partnership for a further Term of 5 Years, upon the Covenants and Agreements in the said Indenture. And further saith, That upon the said *G. B.*'s Death the said Appellant possessed himself of all the Estate, Stock, Wares, Debts, Goods, and Merchandizes belonging to the said Partnership, and took to himself the Apprentice of the said *G. B.* as by a Covenant in the said Indentures the Survivor of the said Partners was obliged to do, and never offered to make any Division of the said Stock, Wares, Debts, Moneys, and Merchandizes, and hath sold, received, and disposed of the same at his own Pleasure.

And this Respondent further saith, That he being Executor to his said Father, the deceased Partner, did require of the said Appellant to pay to this Respondent the Balance of the said last stated Account with Interest from the respective Times the same should have been paid, which he refusing to do, this Respondent was constrained to exhibit his Bill in the Court of *Chancery*, to compel the Appellant to pay this Respondent the same. To which Bill the said Appellant put in his Answer, and Witnesses were examined, and upon the first of *May*, 1699. the said Cause came on to be heard in the said Court; and it was by the said Court decreed, That the Account stated in 1698. should stand, &c. (*and so set out the Proceedings subsequent thereto, briefly taking Notice of whatever is therein*

of

of any material Advantage to the Respondent). That the said Master having been attended by all Persons concerned did the 29th of June last make his Report, according to the Direction of the said Order of, &c. and thereby certified, That there doth remain due to this Respondent, the Sum of 3853 l. 16 s. over and above all Payments made by the said Appellant, which said Report is by subsequent Orders of the said Court of Chancery confirmed. And this Respondent further saith; That the said Decree, from which the said Appellant hath appealed, is (as this Respondent is advised) just and equitable, and well warranted by the Rules of Equity; and therefore hopes this most honourable House will find no Cause to alter, but will confirm and enforce the same: And this Respondent humbly prays, That the said Petition of Appeal, which doth not truly nor fully state the Fact, as it appears by the Articles and Proofs, may be dismis'd with exemplary Costs.

C H A P. XV.

Of Affidavits, Petitions, Motions, References, Reports, Certificates, and Orders of Court.

Hitherto I have treated of the Equitable Proceedings in Chancery, according to an orderly and methodical Course, demonstrating the Method to be observ'd in that Court, from the Bill filed, and the several Processes thereupon, to the last Appeal or *Dernier Resort* of Equity, viz. the Supreme Judicature of the Lords in Parliament.

There yet remains some co-incidental Matters arising in the Course of Proceedings, which could not so aptly be introduced in the foregoing Sheets, by reason they often accidentally intervene in divers Parts of the Proceedings, and have not any Proper Place assigned for them; such are Affidavits, Petitions, Motions, References, Reports, Orders, Injunctions, Certioraries,

Incidental Proceedings, &c.

ries, *Swits* by privileged Persons, and *Swits* in *Forma Pauperis*, and the like.

Affidavits used in Petitions and Motions for Orders.

And here *Note*, That Interlocutory Orders in *Chancery* (i. e. such Orders, as are made after the Bill filed, and before the Decree signed, which do not determine the Right of the Matter in Question) are generally grounded upon *Affidavit* made of some Matters of *Fact* arising after the Suit commenced, and evidenced to the Court, either by Motion, or by Petition with the *Affidavit* annex'd. *Vide infra*.

References, Reports, Orders *Nisi* and absolute.

And such Orders do sometimes determine the Matter of the Petition or Motion, either absolutely, or with a *Nisi Causa*, in Court; and sometimes refer the same to be examined by a Master in *Chancery* for him to make his Report therein, whereupon the Court do usually make an *absolute Order*.

Affidavits, in what Cases admitted.

Affidavits are used for certifying the Service of the *Process* or *Orders* of the Court, or something relating to the same, or other Matters touching the Proceedings in the Cause, and generally where any Motion is made that is not of Course, an *Affidavit* must be read in Court of the Facts alledged.

Rejected.

By an ancient Order no *Affidavit* shall be taken against a former *Affidavit*, so far as the Master in *Chancery* can discern or take Knowledge; which is said to be made for avoiding manifest Perjury; and if such *Affidavit* were taken, the latter was not to be read or used; and the Party was also left to his Action, &c. against the Deponent for Perjury. But this Court do now sometimes interpose, and will either direct or restrain such Prosecution, as they see Cause.

Repugnancy. Perjury, &c.

Touching the Merits, &c.

No *Affidavit* shall be taken or admitted, tending to the Proof or Disproof of the Title or Matter in Question, or touching the Merits of the Cause: Nor shall any such Matter be craftily or colourably inserted in any *Affidavit* of the Service of *Process*, &c.

How written.

No Master shall take any *Affidavit* except it be fair and legibly writ in one Hand, without blotting, or interlining of any Words of Substance, or if he passes the same so blotted or interlined, the Register of the *Affidavit*, or his Deputy shall refuse the same; and no Use shall be made of it in any Proceedings in this Court. *Ord. Chanc. 92. 15 18.*

Affida.

Affidavits are sworn before a Master of the Court, or before a Master Extraordinary in the Country; but the latter are not to take any *Affidavit* in London, or within 20 Miles of it; and every Master Extraordinary shall at the Bottom of the *Affidavit* express the Name of the Town and County, where he takes it, or it shall not be held authentick, or filed. *Ord. Chan. 148.*

How sworn
before Ma-
sters ordina-
ry and extra-
ordinary.

And that *Affidavits* may be reverently and knowingly sworn, all Masters are to administer the Oath themselves, and where they see the Party rash or ignorant, give him some conscionable Admonition of his Duty, and be sure he understands the Matter contained therein, and that he read the same over, or hear it read over in the Master's Presence, and subscribe his Name or Mark thereto, before the same be certify'd or signed by the Master. *Ibid. 146.*

Certify'd or
signed.

Affidavits shall be filed in due and convenient Time after Swearing, and before any Use made thereof in Court, as well to prevent Trouble to the other Party by going often to enquire for them, as that he may have Time by his Council to inform the Court of any just Exception he may have against the same. *Ibid. 19, 93.*

How filed.

In Time.

And if any *Affidavit* is made to ground a Motion upon, it must be filed the Night, at least, before the Motion (that so the other Side may have Time to take a Copy, &c.) if he expects his Order to be absolute. Vide post, Of *Affidavit of Notice*.

All *Affidavits* (except as *infra*) before they be read in Court, or made use of to found any Writs, Processes, Orders, Commissions or Proceedings upon, shall be filed or registred in the *Affidavit-Office*, and attested by a true Copy thereof, under the Hand of the sworn Register of the *Affidavits*, or his Deputy *pro Tempore*: Nor till then shall the Six Clerks, Cursitors, Registers, their Clerks, or Deputies, make, or pass any Writs, Orders, Commissions, &c. grounded thereon. *Ibid. 8, 18, 91.*

With the Re-
gister, &c.

But, *Note*, all *Affidavits* belonging to the *Supplicavit-Office*, and the Petty-Bag-Office, as also those touching Lunaticks and Bankrupts, are not filed in the *Affidavit-Office*.

Exception.

Of serving
Process, &c.

fidavit. Office *supra*, but in such Offices, where those particular Matters are transacted.

Every *Affidavit* of the Service of Process, or of an Order, should not only be true (as all others ought) but also to make it of any Use, it is necessary that it fully prove a good Service. And therefore if the Plaintiff's Name, the Court, the Return of the Writ, (or Process) the Manner of Service, or any Thing material be omitted in the *Affidavit*, no Attachment must issue upon it for Non-appearance, &c. For till a due Service, &c. be shewn, no Contempt appears to the Court.

Affidavit of
Notice.

In an *Affidavit* of Notice of any Thing to a Clerk, 'tis not enough to say, *Notice was given*, or the Copy delivered to the Party's Clerk in Court; but his Name must be expressly mentioned, that it may certainly appear to whom the Notice was given; and it must say, *Notice in Writing*, or Words that tantamount: And if he, who gives the Notice, does not know that he, to whom 'tis given, is the Party's Clerk in Court, he must say, *As he is informed and believes*.

But if the Notice be left at the Clerk's Seat with his Agent or Clerk, such Agent or Clerk, need not be particularly named; and saying *Clerk* or *Agent* to *J. B.* the Plaintiff, or Defendant's Clerk in Court, is sufficient. *Vide infra*, Of Notice of Motions.

Affidavit
joint or several.

Note, An *Affidavit* of several Persons may by the Manner of wording it be made either joint and several, or joint or several.

See Forms of *Affidavits*, and other Matters relating thereto, *ante pag.* 71 to 75, 81, 327, 328.

P E T I T I O N S.

A Petition
defined.
In what Cases
allowed.

A *Petition* is the Request of a Person in Writing directed to the Lord Chancellor, or Master of the Rolls, shewing some Matter or Cause, whereupon the Party prays that somewhat may be granted or done for him. And, *Note*, most things, which may be moved for of Course, may be petitioned for, *viz.*

Things of
Course.

For a Commission to answer or to plead, and demur, &c. For a Letter to a Nobleman to appear and answer,

answer, &c. For setting down and hearing the Cause, or for a Rehearing, or for an Appeal, &c.

So it may be for a Favour desired of the Court, as to enlarge the Time for Answering, or for Publication, or to join in Commission, or for Paying Money, &c. So for Hastening the Time for Publication, Joining in Commission, Payment of Money, &c.

So to have any Hardships removed; as that Process of Contempt may be staid, and that the Defendant may have a Copy of the Bill, where there being many Defendants, who employ several Clerks, his own Clerk cannot get him a Copy, whereby Process of Contempt is issued for not answering.

And in many other the like Cases, Petitions in *Chancery* are usually preferred, subsequent to the Bill filed. But in some Cases a Petition may be precedent to the Suit, &c. As for a Person to be admitted in *Forma Pauperis*, or to be assign'd a Guardian, &c.

Sometimes a Petition is upon a collateral Matter only, as it has Relation to some precedent Suit, or to an Officer of the Court; as to have a Clerk or Solicitor's Bill tax'd, or to oblige him to deliver up Papers, &c.

And 'tis said, Where a Matter comes into Court by Petition, and the other Side would discharge an Order made thereupon, or have any Thing done relating to the Matter of such Petition, he ought regularly to come by way of Petition also; but the Court will often do it upon *Motion*.

But no former Order made in Court, is to be altered, crossed or impugned, or even explained upon any Petition; but the Execution of such Orders may be only staid upon Petition for a small Time, till the Matter can be moved in Court. *Ord. Chan. 151.*

Nor shall any Commission for examining Witnesses be discharged, or any Examinations or Depositions of Witnesses be suppress'd upon a Petition, unless the Matter be first referred to a Master, and a Certificate had thereupon.

No Injunction for Stay of Suits at Law shall be granted, revived, dissolved, or staid upon Petition. Nor shall an Injunction of any other Nature pass by an Order upon Petition, without Notice, and a Copy

Or of Favour.

Or for removing a Hardship.

Subsequent or precedent to the Bill.

Collateral Matter.

Where not allowable. Former Orders.

Injunctions.

of the Petition first given to the other Side; the Petition to be filed with the Register, and the Order entred. *Ord. Chan. 271, 151.*

Sequestrations, Dismissions, &c.

No Sequestration, Dismission, Retainer upon Dismission, or final Order, is granted upon Petition; nor is any former Order made in Court to be altered, crossed, or explained on Petition.

Contempts.

Nor the Commitment of any Person taken upon Process of Contempt to be discharged, but upon hearing the adverse Party, his Attorney or Clerk in the Cause. *Ord. Chan. 151.*

To whom preferred.

The Master of the Rolls is not to be petitioned for Rehearings, but the Lord Chancellor; and 'tis said, the Chancellor is only to be petitioned touching Pleas, Demurrers or Exceptions, or touching any Decree or Special Order made by the Lord Chancellor - - - But in most other Cases of Petition the Master of the Rolls is to be applied to.

How delivered, &c.

Petitions are delivered out of Court, to the Chancellor, or Master of the Roll's Secretary, who are to take Care to get 'em answer'd and sign'd; and if it be for a Matter of Course, as for an Admission in *Forma Pauperis*, &c. it is usually forthwith granted; but if it be for any Thing, which requires Examination, or that the other Side be heard, then 'tis commonly ordered, That all Parties attend the next Day of Petitions, or General Seal; at which Day the Matter is debated and ordered, as the Court sees Cause. And, *Note*, Affidavits are in such Cases often necessary to inform the Court how Matters stand on each Side.

And when.

If there be Occasion to petition out of Term, and the General Seals too, and the Matter is of Consequence, and requires Dispatch, a Petition may be delivered, and the Parties will be ordered to attend the Lord Chancellor, or Master of the Rolls, at the Time in the Order appointed, and may then have Justice done them; for this Court is always open.

Orders thereupon.

An Order upon a Petition for attending and hearing the Matter, must be drawn up, pass'd, and served as other Orders are. *Vide ante p. 330, to 335.* and a Copy of the Petition is also to be delivered to the Party served.

And

And in 1687, it was ordered, That no Order made upon any Petitions (unless the same be by way of Summons, or *Notice*) should be of any Effect to ground *Subpœna's*, or other Process thereupon, unless within three Days in Term-Time, or a Week in the Vacation after the Order granted, the same were drawn up, and entred with the Register, on such Petition, to the End no Person might be surprized with any private Order. *Ord. Chan.* 217.

Drawn up
and entred.

And see *ibid.* 49. an Order made in 1647. That no *Subpœna*, Attachment, or other Process, or Proceedings should be admitted in any Cause upon any Petition, tho' signed, &c. until the said Petition were first filed with the Register, and an Order drawn up and entred thereupon; and all Process and Proceedings otherwise issued, or had thereupon, should be null and void, &c.

Note, All Petitions (even those to be admitted in *Forma Pauperis*) must now be written on double Six-penny Stamps.

Two Six-penny
Stamps.

See the Form of Petitions *ante*, p. 69, 330, 331.

Of MOTIONS.

As a Petition is a Prayer in Writing, &c. as aforesaid, so a *Motion* is a Prayer or Request, made *ore tenus* to the Court, either by the Party himself, or by his Council.

A Motion
defined.

Sometimes a Motion is of Course (that is) where by a standing Rule, or the known Course of the Court, the Thing desired is to be granted without hearing the Party; and in these there needs no Notice of the Motion to the other Side, nor ought their Council to oppose 'em.

When of
Course.

There are others, which would be of Course, on Supposition of the Facts alledged, standing single by themselves; but because there may probably be some other Fact or Circumstance in the Case resting in the Knowledge of the Parties, and which the Court cannot at present see, therefore though it will not deny the Reason of the Motion, it grants it only *Nisi* or conditional; if there be *not Notice* thereof, or if there be, yet all such Motions are not absolutely granted.

When granted
Nisi, or on
Condition,
&c.

When discretionary.

There are others, which are not founded on such general Rules or Usage of the Court, and sometimes besides or against it; and these are granted or denied, as the Court sees fit, upon the Weight and Reasons of the Matters alledged, as it appears upon the Motion, or upon Hearing Council on both Sides.

Notice of Motion when necessary.

And some of these especially, if frequent and of small Moment, are generally granted without Notice; but if less frequent and of more Weight, then only *Nisi*, if no Notice. And all such Motions, as are very rare, or made on extraordinary Occasions, will seldom be granted in *any Sort*, without Notice.

How given.

Notice of a Motion must be given in Writing, and signed with the Name of the Person, that gives it, which is commonly the Party's Clerk or Solicitor, and it must be delivered to the other Party or his Solicitor, (or at least left at one of their Houses, though I have heard that this is not ordinarily good Service) or, which is most usual, it must be delivered to the Clerk in Court, or left at his Seat in the Office with his Clerk or Servant.

Affidavit of Notice, &c.

Before you move, *Affidavit* must be made of the Service of Notice, and the Manner of it, and the *Affidavit* filed, and a Copy taken thereof, if you think you shall need to prove your Notice; and every Notice of Motion must be given two Days at least before the Day, on which it is to be made; as if the Motion is to be on *Thursday*, the Notice must be given at least on *Tuesday*, and the *Affidavit* thereof filed the *Wednesday*. *Vide ante Affidavits.*

What Notice is necessary,

And in what Cases.

And where Notice is necessary, it must be in Writing; every Thing the Party moves for should be expressed therein: For the Court will not ordinarily extend the Order beyond the Notice; as where the Notice was, That the Court would be moved, that the Plaintiff might be put into Possession, and a Receiver appointed, the Court would not order that nothing should be received by the Defendant in the mean Time, though the Defendant did not defend the Motion.

Excom. cap.

So Notice was given of a Motion to supersede an *Excommunicato capiendo*, because the Bishop's Seal was not to the *Significavit*; which upon the Motion happening

pening otherwise, the Council would have insisted, That the Excommunication was before the last General Pardon: But the Court would not hear them to that till another Day, because there was no Notice given of this Exception, which ought to have been; though there needed none of the other, which any one as *Amicus Curie*, might have shewn, had it been true.

Notice of Motion to take Money out of Court, must be given to the Party himself, except the Court upon a previous Motion has ordered so many Days Notice to the Clerk in Court; &c. as may be Time enough to send the Client Notice, and to have his Answer; or if he be in the Kingdom, but hard to be found, &c. such Notice may be ordered to be sufficient.

Where by Reason of the Absence of a Council, who should have defended a Motion, the Court thinks fit to put it off for that Time, the former Notice is often ordered to be continued, so as the Matter may be moved another Day upon Notice, to such absent Council only.

If a Party gives Notice three Times that he will move a Matter, but does it not, he shall ordinarily pay the other 3. Costs: But if it be a Matter of Weight, and many Council are feed, the Court will order Costs to be taxed by a Master:

During the Term, every *Thursday* is a Day for Sealing and Motions only, except it happens to be the second Day of the Beginning, or the last save one of the End of the Term. *Ord. Chanc. 65.* So are *Tuesdays* and *Saturdays*: *Vide Pres. ad eund.* And so are the first and the last Days of the Term. *Ibid, 65.*

In Vacation *Seal-Days* are only Days of Motion, and are appointed by the Lord Chancellor; yet the Morning after the Term Motions are always made at the Rolls, upon Supposal that some may probably remain, which should have been moved, but could not, the last Day of the Term.

Note, No Motions are heard after the last General Seal before the ensuing Term; but Matters, which require Dispatch, may be petitioned for, and Right will be done; for this Court is always open.

Amicus Cur'

To whom be given.

Notice continued.

Costs for not moving.

Motion and Seal-Days in Term.

In Vacation.

No Motion, but Petition.

It

**Needless
Motions to
be avoided.**

It has been said, That there is seldom Occasion for more than one Motion in a Cause, *viz.* for an Injunction for quieting Possession, or staying Suits at Law, other Motions being for the most Part needless, or not tending to end, but perplex the Cause : And a Cause would be sooner ready for hearing, if it went on in an orderly Course by Pleadings and Proofs, without being cross'd and perplex'd by frivolous Motions.

**Matters of
Course deter-
mined by the
Six Clerks.**

But many Motions are now made touching the regular Issuing forth Execution, and Filing of Writs, Process, Commissions, and other Matters of Course, which heretofore were commonly rescued to Four of the Six Clerks not in the Cause, who hearing the other two Clerks towards the Cause, did easily determine the Question, without Delay or Charge to the Suitor.

Of REFERENCES.

It has been before observ'd, That upon a Petition or Motion, if the Matter thereof be not frequent, or of Weight, it is oftentimes by Order referred to a Master for to make his Report therein.

**A Reference
defined.**

A *Reference* is an Order of Court, whereby Exceptions, Contempts, Irregularities, Matters of Account, and such like are referred to a Master to examine, and make a Report of to the Court, that so the Court may make an absolute Order therein ; and sometimes the Master is empowered by such Order of Reference finally to determine, or settle some Matter therein mentioned.

To whom.

These References are commonly made to one of the Masters ordinary in *Chancery*, sitting in Court, when the Matter referred was moved : But upon Motion and Cause shewn, they may be directed to any other of the said Masters.

Note.

Though in some Cases References are absolutely necessary for the Ease of the Court, as to cast up, state and adjust Accompts, peruse Court-Rolls, and other Writings, &c. which would take up the Court too much Time, and hinder the Dispatch of other Business of more

more Importance; yet in many Cases they occasion great Charge and Loss of Time to the Suitor.

Generally Matters of Account (except in very weighty Causes) are, upon the Hearing, turned over to a Master to examine and report, in order for the Court to make a final Decree; with some Directions to the Master in what manner he shall proceed therein, and in making his Report.

The like Course of Reference is to be taken for the Examination of Court-Rolls, touching any Customs of the Manor, &c. But the Copies shall not be referred to any one Master, but to two at the least.

If both Parties, before Hearing, consent to an Examination of Accompts to make the Cause more ready for the Hearing, it may be granted. But the more common Way now is not to examine to a Matter of Accompt before the Hearing, but after; which is to be before a Master, if the Witnesses be in Town, &c. if not, then by a Commission to be directed by the Master upon an Order for his being arm'd (as they call it) with a Commission. *Vide ante pag. 264, 342. and Ord. Chan. 156.*

Note, In an Accompt, or Taxing Costs before a Master, Vouchers or Proofs are generally expected for every Thing, that has not a moral Certainty, or violent Presumption, or appears not of itself as a necessary Concomitant or Consequence of some other Thing already proved or certain: Wherefore Copies, Briefs, and Papers in the Cause of all Sorts, are to be carefully kept.

If before the Master either Party (by his Council, Clerk, or Solicitor) admit a Matter of Fact, the Master shall take a *Memorandum* thereof in his Book of Minutes, or *Memorandums*, and the Party admitting shall in his Presence subscribe such *Memorandum*; which Subscription shall be conclusive to the Party, on whose Behalf the same was so subscribed, so as the other Side shall not be put to any farther Proof of that Matter. *Ord. Chan. 254.*

Money being paid into Court here, upon obtaining an Injunction to stay Proceedings at Law, the Complainant offered, That the Defendant here should have the Money presently, and he would go before a Master

Of Accounts, &c.

Court Rolls.

Accompts.

Taxing Costs, &c.

How heard.

On Money paid into Court.

ster with him to settle what was more due to him for Principal and Interest, and for Costs here and at Law, the Report to be procured in a Week, and the Money reported to be paid in a Week more; which the Defendant agreeing to, the Court so ordered *ex assensu Partium*; and that the Defendant should upon Receipt of the Money acknowledge Satisfaction at Law, and the Complainant should dismiss his own Bill.

The Master's
Summons,
&c.

The Master being shewed an Order of Reference, on Request of the Party shewing it, grants his Warrant of Summons, whereby he appoints a Time and Place (commonly his Chamber) for the Parties to attend him thereon (when and where they may come with their Council, Clerk, or Solicitor, as they see Cause) which being served on the adverse Party, his Clerk or Solicitor by shewing it, and delivering a Copy: If he attends not, the Master usually grants a second Summons appointing a further Day, &c. And if he does not then attend, a third Summons, which is called a *Peremptory Summons*: And if he does not then attend the Master is to make his Report *ex Parte*, of that Side, that attends and desires it.

Report *ex*
parte.

Reference
transferred,

A Master dying, the Court ordered, that the several Matters referred to him should be transferred to another; and further ordered, That all Books, Papers, &c. that concerned the Causes referred to the Deceased, should be transferred to such living Master when demanded. *Ord. Chan. 231.*

Arbitrators.

The Matter of a Suit here, may by Consent be referred to Arbitrators, and their Arbitration will be in Nature of a Master's Report; and may be excepted to accordingly. *Vide ante, Of Exceptions to Reports, p. 117, 136, 137, 225.*

References
denied.

No Reference shall be upon a *Demurrer* or Question touching the *Jurisdiction* of the Court, but such *Demurrer*, &c. shall be heard, ruled and determined by the Court.

And where a Cause is gone so far, as to *Examination of Witnesses*, no Reference is to be made to any Master, or to any Commissioners to hear and end the Matter, except it be in Special Cases of Parties near in Blood, or of extreme Poverty, or by Consent. Also a Reference of the *State of the Case* is to be sparingly granted, except it be by Consent.

Not

Nor shall any Reference be of an *Answer*, without **Answers.**
alleging th Special Causes in the Exceptions.

And some think it convenient that the Insufficiency of Answers should not be referred at all, but that the Exceptions should be at first openly argued in Court, whereby those, who now for Delay only put in frivolous Answers (or Exceptions to Answers) or move the Court to refer what perhaps they never read, would be more cautious therein for fear of giving Offence to the Court; and so the Matter being determined at once, Delays would be prevented, and Charges saved. And they apprehend the Court would not thereby find more, or so much Trouble, as now they do on Exceptions to Masters Reports.

Note, It was an ancient and useful Practice, That the Register within ten Days after the End of every Term certify'd to the Lord Chancellor what References depended in the Hand of any Master, and how long they had depended; that so the Court might require an Account thereof from the Master, and quicken him to a Dispatch.

A useful
Practice.

Of R E P O R T S.

A *Report* is a Master's Certificate to the Court how the Facts or Matters referred to him by the Court to examine are, or do appear to him, or of somewhat, which it is his Duty to inform the Court of.

Definition.

By ancient Order the Masters of the Court are required, That upon a particular Matter referred to them, they do not certify the State of the Cause, as if they would make Briefs of the Evidence on both Sides, but that they do it briefly with some Opinion upon the Matter reported.

Reports to be
brief with the
Master's Opin-
ion.

And by a later Order the Masters are not upon the Importunity of any Council, Clients, or any whatsoever, to return Special Certificates to the Court, unless required by the Court so to do; or that their own Judgment, in respect of Difficulty, lead them to it.
Ord. Chan. 144.

No special
Certificate,
Nisi.

And by the same Order all Certificates and Reports are to be drawn as succinctly as may be (reserving the Matter clearly for the Judgment of the Court)

Without Re-
citals, &c.

and

and without Recital of the several Points of the Order of Reference, or the Debates of the Council before them, unless in Cases, where they are *doubtful*, they shortly represent to the Court the Reasons, which induced them so to be. *Ibid.*

Not to exceed the Order of Reference, Except on an Answer referred.

The Report must not ordinarily exceed the Order of Reference; but when the Court requires to be satisfied from a Master of any Matter alledged to be confess'd, or set forth in an Answer, he is by the standing Order of the Court to take Consideration of the whole Answer, and to certify not only whether the Matter be so confess'd or set forth, but also any other Matter avoiding that Confession, or balancing the same, that so the Court may receive a true Information. *Ibid.* 145.

Report *ex parte*.

If a Report upon a Reference of an insufficient Answer be not procured and filed with the Register within a Month after the Date of such Reference, the Reference becomes absolutely void, without any Motion or special Order for that Purpose. For a Report may be made *ex Parte*, and how a Report may be so procured, *vide ante*, p. 428.

How procured on Hearing and signed.

Every Master, to whom any Accounts or other Matters are by any Order upon Hearing referred, when he hath fully heard both Parties, and prepared his Report, shall, at the Request of either Party, give out a Summons, that both Parties, or some for them shall again attend him, who shall have Liberty to peruse such Report, or take a Copy thereof. And if either Party shall be dissatisfied, he shall in four Days next after such Attendance, bring in a Note in Writing of his Objections thereto, and take out a Summons to be heard thereupon; and then the Master is to settle and finish his Report, as he shall find just. *Ord. Chan.* 201.

Objections thereto.

Exceptions argued, &c.

But after the Master hath made his Report, Exceptions may be taken thereto by either Party, which must be argued openly in Court; and if upon Arguing the same it shall appear, that the Party excepting did not offer his Objections to the Master, but depended upon his Appeal to the Court, and sought Delay, tho' the Exceptions happen to be allowed, yet the Party, for his Neglect, and occasioning Trouble to the Court, and

and Charge and Delay to the Adversary, shall pay such Costs, as the Court shall think reasonable. *Ord. Chan. 202.*

And by a late Order, If any exception, or distinct Clause of an Exception to a Report upon an Account, &c. be over-ruled or waved at the Arguing, the Party excepting shall pay 20 s. for each that shall be over-ruled, &c. and for each, that shall be waved or not opened, 10 s. though all the rest be allowed good.

Where a Master reports or certifies any Irregularity in Proceedings, there may be a Reference to the Master, but no Exceptions; for these Matters used to be certified by the Six Clerks not towards the Cause, and less Credit is not to be given to a Master, than to them.

Note.

All Reports and Certificates made and signed by any of the Masters shall be filed with the Register within Four Days after the Making and Signing, and the Register shall mark on the Back thereof the Day of its Receipt and Filing. And all Proceedings grounded on such Report or Certificate not filed, as aforesaid, shall be utterly void; and the Register's Certificate of such Neglect, shall be a good Cause to discharge the Proceedings thereupon, and for such further Costs against the Party offending, as the Court shall think fit. *Ord. Chan. 237.*

How filed.

How avoided and discharged,

Note, Where a Time was prefixed for the Master to make his Report, and he made it after that Time, the Report was disallowed. *1 Chan. Cases 179.*

Or disallowed.

After a Report, whereon to ground a Decree, is signed by the Master, no Order can be had to confirm it, till it be filed with the Register, and Notice of the filing thereof given to the other Side a Week at least before the Motion for confirming it, the other Party having Eight Days from the Service to except thereto.

How confirmed,

But if it be not to ground a Decree, and it is positive, it is to stand, and Process may be taken out to enforce the Performance of the Matter aimed at by the Reference, (as for a better Answer, &c.) without any further Motion, unless the adverse Party, upon Notice to his Attorney, or Clerk in Court, that such Report is filed, do in due Time obtain some Order of

Enforced,

Controuled or suspended. of Court to controul or suspend the same. *Ord. Chan. 146.*

Note, Such Order of Controul or Suspension must be procured within Eight Days after Notice of the Report's being filed, if Notice be given in Term, or during the General Seals after Term; or it must be procured within Four Days of the Next Term, if the Notice be given after the Term and General Seals: *Ibid.* But though the Eight Days be past, yet if it be but lately, the Court will sometimes, on Motion, order Exceptions to be received, and the Party to procure a Report in a short Time.

Exceptions. Where by a Special Order the Court shall admit Exceptions to be put in to a Report, whereby Money is reported due, after the Time such Exceptions should have been regularly filed, no Proceedings on such Report shall be stayed without giving Security to pay the Money, or bringing the same into Court, unless the Court shall otherwise provide by particular Order *Ord. Chan. 203.*

Confirmation. Upon a Dismission with Costs to be taxed by a Master, you need no Confirmation of his Report, but may forthwith take out a *Subpœna* for them: Also if an Answer be reported insufficient, Process for Costs and a better Answer may be issued immediately. *Ord. Chan. 147.*

Nisi Causa. A Report of Money due on Accompt, and most other Matters decreed, must be personally served before it can be confirmed. And if the adverse Party do not consent to the confirming a Report, it will be only ordered *nisi Causa*, &c. the next Day of Motions, or some other short Day. *Note,* If a Report be confirm'd *Nisi*, &c. and the Party obtains Leave to go back to a Master for him to review it, he must pay such Costs, as the Court shall think fit.

Costs. If after a Report is confirm'd *Nisi Causa*, a Party upon Motion obtains Leave to go back to a Master for him to review it, he must pay 40 s. and further Costs to be taxed, if the Report be affirmed.

If a Master report a best Purchasor, and the Report is confirmed *Nisi*, &c. (as it always is before it be made absolute) if the adverse Party be not satisfied, the Court on Motion will generally send them back to the

the Master for a few Days, as 14 or so, to see if a better Purchaser can be found.

After a Report is confirm'd, the Court will not easily, if at all, stir it upon Pretence of an Omission, or Mistake therein: For the Parties had sufficient Time to except to it, and if they will not mind their Business, 'tis their own Fault; much less will the Court alter it, if it was confirm'd by Consent of Parties.

Exceptions
to Reports.

If one appeals from a Master's Certificate, or Report, by excepting thereto, he must file his Exceptions speedily with the Register, and deposit 5 l. with him, whereby Proceedings are staid till the Exceptions be argued. And if the Court do not alter the Report, the 5 l. shall be paid to the Party defending the Report, with such further Sums as *ante pag.* otherwise the 5 l. is to be restored to the Party appealing, who is also to have the like Sum of the Party defending the Report.

How filed,

Upon filing Exceptions, and depositing the 5 l. the Register gives a Certificate thereof, for which he has 1 s. And upon Motion, and producing the said Certificate, the Court will order a Stay of Proceedings, and appoint a Day, commonly the next Day of Exceptions, for hearing thereof.

The Register shall enter such Causes of Appeal, (*i. e.* Exceptions to Reports, &c.) in Order as they are brought to him to be determined by the Court in Course upon Days of Motions (Exceptions rather) and Notice thereof is to be given to the Clerk on the other Side; and the Register is to set up a Paper of such Causes two Days before the Day, for arguing such Exceptions. *Ord. Chan. 147.*

And entered,
&c.

Note, For a Report before Hearing, you pay the Master 15 s. and for a Report after Hearing, you pay him 25 s.

OF CERTIFICATES.

A Certificate (as it immediately concerns the Administration of Equity in this Court) is a Matter in Writing, under the Hand, or Hands of Assistants, Officers, Ministers, or Delegates of the Court, informing the Court of something under their respective Admini-

Definition,

F f

stration,

stration, or Cognizance, that is done, not done, or misdome, which a standing, or other Order, or Mandate of the Court, or their Duty, or the Reason of the Thing requires them to acquaint the Court with. And these *Certificates* the Court gives much Credit to, especially from the Assistants and standing Officers of the Court.

Certificates
of Answers.

In the Caption of Answers taken in the Country, (which is a *Certificate* of the Commissioners) the Town and County where, and the Day and Year, when the Answer is sworn, ought to be inserted, otherwise the Answer may be quash'd; and so in the Caption of *Affidavits*, Depositions, &c.

Affidavits,
Depositions,
&c.

And the Court may be shewed such Omission, either by an Office-Copy, or it may be referred to a Master to examine and certify.

The *Certificate* of Commissioners of any Thing touching the Execution of their *Commission* ought to be filed before it be read.

OF ORDERS of COURT.

Interlocutory
Orders.

Next we proceed to *Orders of the Court*, wherein we shall not meddle with Decretal Orders, these being already treated of under the Head *Of Decrees*; nor shall we treat of general and standing Orders, which are generally called *Rules*: But the Orders here intended are chiefly interlocutory, or incidental Orders; *i. e.* such as are antecedent to the Decree.

Their several
Kinds.

And these are sometimes touching the Commencement of the Suit, sometimes touching the Process, or Proceedings therein, and sometimes with respect to the End and Fruit thereof,

How obtained.

Again, These Orders are sometimes founded on the general and standing Orders or Rules of Court, and sometimes they are made upon the particular Circumstances of the Case; and both these are usually obtained on the Petition or Motion of one of the Parties in the Cause, or of a Party about to commence a Suit, or of some Person, that is interested in the Cause, or some way affected by it.

By Motion,
or Petition.

Also, Sometimes Orders are made upon hearing the Parties adversarily contending *pro & contra*; and

and in these Regard is always had to the General Rules and Usage of the Court: And sometimes they are made by Consent of the Parties, and then they are often besides or beyond the Rules, or the common Usage of the Court.

Every Order must be pronounced in Court, and drawn up by the Register, who sat in Court, and took Notes or Minutes thereof in his Book, when the same was so pronounced; which that it may be the better done, the Solicitor should after Rising of the Court, if the Order be any Thing Special, go to the Register's Office, and there take a Copy of the Minutes, and give them to the Register, and explain them to him, so that he may have the Order drawn up right, and for his Client's just Advantage.

How drawn up, &c.

Solicitors Duty therein.

No Draught of any Order shall be delivered by the Register to either Party, without keeping a Copy thereof by him; to the end that, if the Order be not entred, yet the Court may, if needful, be informed of what was formerly done, and not be put to a new Trouble: And also to the end the Knowledge of Orders may not be kept too long from either Party, but may be presently found at the Office by the said Copy.

Register's Duty.
Vide infra.

Also, The Register, upon Delivery of any Order to the Council, &c. of either Party, is not to respect the Interlineations or Alterations of the Council (be he ever so great) further than to be put in Mind of what was delivered in Court, and so to conceive and frame the Order according to his Oath and Duty, without any other or further Respect.

If there be any Doubt of the Meaning of the Minutes, the Register gives the Clerk, or Solicitor, who desires the Order to be drawn up, a Summons to the Clerk or Solicitor on the other Side, appointing a Time for both Sides to attend him in order to settle it. And if by this Means it cannot be settled, the Court must be applied to to explain the Minutes.

How settled, &c.

This Method is usually observ'd in special Cases; but if the Order be of Course, the Solicitor generally thinks it sufficient to draw up the Minutes of his own Head, as such Matter is commonly ordered, and give them to the Register's Clerk to draw up the Order by.

Order of Course.

Orders how
entered,
sign'd, pass'd,
and served.

An Order drawn up by the Register must be given to his Entering Clerk to be entred; which done, the Register will sign and pass it, and then 'tis perfectly authentick; and you may, when there is Occasion, serve the other Side therewith, *i. e.* give the other's Clerk in Court Notice of it by shewing it, and delivering a Copy thereof; or you may read it in Court, &c. N. B. *This is meant of Interlocutory Orders, and such like.*

Register's
Duty, *vide*
supra.

The Register is to set down Orders, as they are pronounced by the Court *truly*, at his Peril, without troubling the Lord Chancellor by any private Attendance to explain his Meaning. And regularly no Order made in open Court is to be altered, crossed, or explain'd upon any Petition, though the Execution thereof may be staid, &c. *ut ante.*

Note.

Yet if the Register draw up, and pass any Order contrary to the Intent and Direction of the Court, the Lord Chancellor, or Master of the Rolls, before whom it was moved, will sometimes upon Petition (when the same cannot be conveniently moved in respect of Time, &c. as in the Vacation) appoint a Day for both Sides to attend with the Register to settle it.

All Orders drawn up by the Register are to be sign'd and entred in due Time; yet if an Order be entred, they often omit the Register's Hand to it, except it be of great Moment, as a decretal Order, or the like, and think it well enough. But it is good to observe the Rule; for if this Matter be objected, the Order will not be admitted to be read in Court, &c.

Orders altered.

'Tis said, No Orders, but final and decretal ones, may be received to be entred after eight Days from the Day of pronouncing: And, *Note*, after Orders are entred, they may not on any Occasion whatsoever be in any wise altered, without special Order and Direction of the Court.

Former Order to be mentioned.

Where any Order is had, and a former Order any way material for the Court to take Notice of was made in the Cause touching the same Matter, and which the Court was not truly or fully inform'd of, no Benefit shall be taken of the later Order, but the Court will upon Motion quash, or alter the same, as surreptitiously obtain'd.

And

And therefore the Register, in drawing up any Order, doth always mention the next precedent Order therein; which the Solicitor should take Care may be fully and truly recited, lest any Occasion or Mistake in the Recital should occasion Damage to his Client.

And this is now a standing Order.

An Order against, or out of the general Rules, or Course of the Court, must express the special Reasons moving the Court to vary from those general Rules, *Order against the general Rules.*

&c.

Just before the Rising of the Court, you may move to have an Order, *nisi causa*, &c. made absolute, which the Court commonly grants, provided Cause be not shewn before the Court rises; yet, if moved early in the Day, it has sometimes been refused, and the Party bid to move it at the Rolls in the Evening; for the Party has all the Day, during the Sitting of the Court, to shew Cause. *Nisi Causa, how made absolute.*

And Note, An Affidavit of the Service of the Order *Nisi* is necessary to such Motion, and without a Motion such Order is not *absolute*, though no Cause be shewn, except it be expressly said in the Order, *without further Motion.* And if you move not to make such Order *Nisi* absolute till some Time after the Day given to shew Cause, you must not only produce an Affidavit of the Service of the Order, but a Certificate from the Register, that no Cause is shewn to the contrary; and then, if upon moving, none shew Cause, the Court makes it absolute. *On Affidavit and Motion.*

An Order *Nisi*, &c. founded on an Affidavit was obtained, no Notice having been given of the Motion, and on the Day to shew Cause, the other Parties Council in shewing Cause insisted, That the Affidavit should have been mentioned and referred to in the Order, that so the Party might have been able to answer it, which he could not now do, knowing nothing of it. The Court said, If the Affidavit had been since the Order, the other Party must have had Time to answer it; but being otherwise, the Party was allowed to go on with the Motion, though the Council *contra* much opposed it. *Notice of Motion. Affidavit.*

If the Side which draws not up the Order, bespeaks a Copy of it drawn up, but not passed, four Days *Objections to the Order.*

It must be drawn up, &c.

are allowed to retain it with Objections, if he have any to it. And if he, upon whose Motion, or for whose Benefit an Order is made, does not draw it up, &c. he cannot *ordinarily* have any Use of it, or take any Benefit by it.

Yet, where a Bill to redeem the Wife's Inheritance was dismiss'd with Costs, for want of Prosecution, the Order not being drawn up, the Plaintiff prayed to retain the Bill, the Defendant makes Affidavit of the Husband's being beyond Sea, and prays, that before the Bill be retained, the Plaintiff may pay the Costs of the Dismission, &c. The Court ordered the Plaintiff to give Security to redeem and pay the Costs on the Dismission, if they were taxed, else not; and then the Bill to be retained.

But the general Course is, That if either Party will make any Use, or have any Benefit by an Order, it must be first drawn up and perfected.

How drawn up on a Hearing, and Opinion of the Court.

Where a Cause hath been debated upon the Hearing of both Parties, and an Opinion has been delivered by the Court, and nevertheless the Cause is referred to Treaty, the Registers are *not to omit the Opinion of the Court* in drawing the Order of Reference, except the Court do specially declare, that it is to be entered without any Opinion either Way: In which Case the Registers notwithstanding are out of their short Notes to draw up some more full Remembrance of what passed in Court, thereby to inform the Court in Case the Cause should come back again not agreed.

How served.

The usual Way of serving an Order, is to shew it to the Clerk, or Solicitor on the other Side, and give him a Copy of it, or to leave a Copy of it with some Person attending in the Clerk's Seat in the Office, and to shew him the Order: But till the Order under Seal be served on the Party himself, he is not *ordinarily* brought into Contempt, nor to be committed for Disobedience.

Personally.

Not so on a Solicitor, &c.

Yet in Case of an Order made against a Solicitor, or other Person, or Minister, Attendant on the Court, it is said to be otherwise; because he is supposed to be present and to know, or easily able to inform himself with Certainty of what passes in the Court.

An Order for Payment of Costs, or other Money, must be *personally* served, and the Costs demanded; and if the Party, to whom it is payable, serves not the Order himself, he must give him, that serves it, a Letter of Attorney, or the like Authority to demand and receive the Money. For Payment of Money.

Disobedience to an Order, which enjoyns the *not doing* of a Thing, is look'd upon as a greater Contempt, than where something is commanded to be *done*; the first being always in a Man's Power, the other not so. Disobedience

An Order made by the Lord Chancellor may in Court be discharged by the Master of the Rolls, when *he only* is sitting there: But if it be a Matter of Difficulty, he will not ordinarily meddle with it; except it be by Consent of Parties. Order discharged.

If you move to discharge an Order, you ought to have it drawn up, and ready to shew to the Court, that so the Court may see and judge of the Order, and of the Reasons, upon which it was made.

Note, Orders after Decrees past are never to retract from the Decree, but are to pursue the Decree, and carry it on with Effect. Orders after Decrees.

A Submission to an Award, may be made an Order of this Court, *per Stat. 9, W. 3. cap. 15.* Awards.

C H A P. XVI.

*Of Injunctions and Certioraries, Proce-
do's, Ne exeat Regnum's, Homine reple-
giando's, Habeas Corpus's, &c. As also
of Bills of Enterpleader and Supplemen-
tal Bills.*

IT is before shewn, That a Bill may be brought in this Court praying an Injunction, either to stay Injunction-
Bills.

Proceedings at Law, or to stay Waste, &c. And if it be the former, the Complainant therein usually suggests some rigorous Proceedings at Law, either begun or threatned by the Defendant; and that he by To stay Suits.

To stay
Waste.

Stat. 4 & 5
Anne.

Process
thereon.

Writs of In-
junction.

Their Kinds.

By Writ.

By Parol.

To stay Suits
at Law, &c.

Or Judg-
ment.

the strict Rules of Common Law, or for Want of Witnesses or other Cause, is without Redress or Defence therein, &c. *Vide ante pag. 44, 47, 49.*

If it be to stay Waste, Affidavit must be made, that some Waste or Spoil is done, or threatened to be done in the Lands, Houses, &c. wherein the Complainant claims a Right or Interest, or for which he sues, &c. *Vide hereof infra.* And, note, by an Exception in the Stat. 4 & 5 Anne for Amendment of the Law, *Subpœnas*, or other Process for Appearance upon these Bills, may be issued and served before the Bill be filed.

But 'tis said, if a *Subpœna* returnable *immediate* issue in an Injunction Cause, the Bill must be filed by the first *Costs-Days* in the subsequent Term. Touching *Costs-Days* *vide ante pag. 98, 197.*

An Injunction is a *Writ remedial*, in Nature of a Prohibition, issuing out of this Court upon a Petition or Bill exhibited; and (if the Prayer of the Bill, or Petition be accordingly) may be granted either to stay a Suit in some other Court, as in a Court of Law, Court of Admiralty, Ecclesiastical Court, or inferior Court of Equity; or to restrain one from doing a sudden Waste, or Damage to the Freehold, or Inheritance of another, by selling Timber, ploughing Meadow, &c.

Or it may be to yield up, or quiet, or continue the Possession of Lands, Houses, &c. See the Form of such Writ, *ante p. 92.* Which last Kind of Injunction is generally a *Judicial Writ*, and subsequent to the Decree, being in Nature of a Writ of Execution, or *Haberi faciās Possessionem*. But though it be commonly by Way of Writ founded on an Order of Court, yet an Injunction may be by Word of Mouth, when the Party inhabited is present in Court, and an Order enter'd for that Purpose.

Where an Injunction is granted to stay Proceedings at Law, if the Cause be at Issue, or a Declaration delivered, it commonly gives leave to go to Trial, &c. but stays Execution. And 'tis said in some Cases, where the Matter at Law is tried, it bars from Judgment, (but this I take, is only on such Issues as are directed by this Court) and some Cases where a Judgment

Judgment is executed, it will stay the Money in the Sheriff's Hands. *Vide infra*, Execution.

And where it is to stay Suits in other Courts, 'tis commonly *prayed*, and granted on some Matter of Equity suggested in the Bill, as that the Complainant is not able (for certain Reasons therein shewn) to make his Defence in the other Court, though he has good Matter to discharge him here; or that he is sued at Law for a Penalty, which in Equity he ought not to pay; or that the other Court has not Jurisdiction of the Cause; as where a Spiritual Court holds Plea of Matters Temporal, or the Admiralty of Matters transacted on Land; or that the other Court refuses him some rightful Advantage, or acts erroneously, or unjustly in their Proceedings, or has not Power to do him Right, & *similia*.

And it is *obtained by Order*, either upon Matter confess'd in the Defendant's Answer, or upon some Matter of Record, or upon some Deed, or Writing, or other Evidence shewn in Court, whereby it appears there is some Probability that the Party ought to be discharg'd in Equity, though perhaps not elsewhere, from such Suit, &c.

Also where the Defendant is in *Contempt*, or has *prayed a Dedimus*, (to excuse his *Contempt*) and has not yet answered such Bill; or where the Debt appears to be old, and the Defendant hath slept long; or where the Creditor and Debtor have been dead long before the Suit; or where the Defendant cannot be found to be served with a *Subpoena*, the Court will ordinarily grant an Injunction.

Note, If it be granted before Answer, 'tis commonly *until Answer and further Order*; and in such Case, after the Answer is come in, if the Council for the Defendant alledge, That the Defendant has answered and denied the whole Equity of the Plaintiff's Bill, (his *Contempts*, if any, being cleared, and his Appearance entred) and also produce a Certificate from the Six Clerk of the Answers being filed 14 Days, the Court will order the Injunction to stand dissolved *nisi Causa*, at a short Day, and perhaps without such Certificate; and if at the Day no Cause be shewn, then, on Motion and Affidavit of the due Service of the Order, the Order will be made absolute.

Or Execution.

How prayed, or granted to.

Courts of Law.

Spiritual Courts.

Admiralty, &c.

How obtain'd.

In what Cases.

How before Answer.

How dissolved.

On Motion, and Affidavit.

If

If in Term-time, and a Rolls-Day, it is usually moved to be confirm'd at the Rolls in the Evening after the Rising of the Court at *Westminster*. And if the Council, who then moves it, does not produce an Affidavit of the Service of the Order, it must at least be produced to the Register, before the Order to make it absolute be drawn up.

In what Cases dissolved, or not.

But if the Appearance be not entred, Contempts cleared, Answer filed 14 Days, all Equity denied, or that Exceptions to the Answer are put in, or that the Answer is reported insufficient; any of these are good Causes against dissolving the Injunction: But if there be two Defendants, the Court will not ordinarily dissolve the Injunction, till both have answered. Also where there is an Appearance of Equity with the Complainant, or that his Case seems very hard, the Court will not easily dissolve the Injunction; nor will they ordinarily dissolve 'em the last Seal after Term. Nor is an Injunction ever dissolved without Motion on the adverse Part: Nor shall an Injunction of any Nature be either granted, revived, dissolved or stay'd, upon any private Petition. For all Injunctions are to be granted on Motion, and what is granted by Motion ought to be dissolved by Motion.

On Petition, &c.

But see *Ord. Chan.* 151. No Injunction for Stay of Suits at Law shall be granted, revived, dissolved, or stay'd upon a Petition; nor any Injunction of any other Nature pass by Order upon a Petition, without Notice and a Copy of the Petition first had by, or given to the other Side, and the Petition filed with the Register, and the Order entred.

How granted.

When the Defendant prayed a *Dedimus* to take his Answer, Plea, &c. in the Country, the Order some Time was, That the Plaintiff's Six-Clerk, or Under-Clerk, might without Motion draw a Docquet and Injunction of Course, subscribing his Name to the Docquet, and express in the Writ, in usual Form, the Cause of granting the Injunction; both which so prepared, were to be presented to be signed; and if the Injunction issued in any other Manner, it was void. But of late such Injunction is moved for (as all others are) and is granted of Course, till coming in of the Answer, and further Order.

The

The Defendant having prayed a *Dedimus*, the Com-plainant moved for an Injunction: But the Court (though the Defendant had Bail at Law) would *not* grant it on other Terms, than that the Complainant should bring into Court the Money recovered at Law, because the Complainant was going beyond Sea. And *Note*, ('tis said) the Defendant, after having Leave for a *Dedimus* to take his Answer, is bound to take Notice of an Order for an Injunction, though he be not served with the Writ.

The Defendant's Plea being allowed, he moved to dissolve the Injunction, the Court said, When the Plea is allowed, there is ordinarily an End of the Injunction, but not always; That the Defendant had pleaded only what the Plaintiff had confess'd and set forth, *viz.* an Award; and though the Defendant and Referees have denied all Practice, and sworn that the Plaintiff was heard, and the Award duly obtain'd, yet Practice and unfair Proceedings are often found in Awards. The Defendant's Council said, The other Side ought to shew some Equity confess'd, or allow'd in the Answer: But was answered by the Court, That though Awards are favoured here, because they tend to settle Peace among Parties; and although there be Notice of this Motion, yet an Injunction is not to be absolutely dissolved upon Allowance of the Plea, but only *Nisi*, because there may be some Equity shewn for continuing it. The Court, however, ordered the Money awarded to be brought into Court by the first Seal, or the Injunction to stand dissolved *without further Motion*, the Plaintiff to enter up his Judgment (having at Law had a Verdict) and tax his Costs, which were also to be brought in, but to stay Execution, though the Court seem'd willing to have had him forbear entering Judgment.

Upon a Plea, or Demurrer's being allowed, the Injunction, that was granted, *nisi Answer*, &c. will commonly be dissolved on Motion: But in such Case, or on coming in of the Answer, the Court will not absolutely dissolve it on the first Motion (though there be an Affidavit of Notice) but only *Nisi*, &c.

Also the Court refused to grant an Injunction whilst a Demurrer was depending; for till the Demurrer be argued,

On a *Dedimus*.

On a Plea allowed.

Awards,
Vide infra.

Verdict.

Judgment.

Plea, or Demurrer allowed.

Demurrer depending.

argued, it does not appear whether the Court has Cognizance of the Cause, or not, till when no Order ought to be made: So that in that Case it was even doubted whether it could be granted for any special Cause.

On the Merits, or Delay of Proceedings.

Where an Injunction is granted upon the Merits of the Cause, or upon some special Cause of Equity, it is commonly to stand till Hearing, unless the Plaintiff delay his Suit. But a Delay of Proceedings here, if for any unreasonable Time, is a good Cause for dissolving an Injunction for staying Proceedings at Law, &c. And yet sometimes the Court will receive it, tho' dissolv'd, especially where Equity is Evidently with the Complainant, or his Case is hard. For though an Injunction be dissolved, yet it may be reviv'd on Motion and Cause shewn.

On Bill and Answer, in what Cases.

The Court would *not continue* an Injunction upon a Bill to be relieved against the Penalty of a Bond prosecuted at Law, except either the Money sworn by the Answer to be due thereon were brought into Court, or the Complainant gave a Judgment at Law, and Release of Errors: And if he had not been thought of sufficient Ability, the Court would have suffered the Plaintiff at Law to have proceeded there as far as the Return of a second *Scire Facias*, so as to make the Bail liable.

Money due on Bond.
Vide Judgments *infra*.

Counter-bonds, Contracts, Accounts.

K

A Surety in a Bond prosecuted at Law on a Counter bond for Money he had paid, and for other Matters upon Contract and Account, the Defendant files his Bill here, and has an Injunction, &c. The Court ordered the Money sworn due on the Original Bond, to be paid to the Defendant here in a Month, subject to the Direction of the Court upon Hearing, or else the Injunction to stand *dissolved*.

And where the Defendant by his Answer swears a certain Sum of Money due to him, the Court will often either *not grant*, or *not continue* an Injunction, unless the Plaintiff bring the Money into Court, &c. yet Time will be given to bring it in, as the Greatness of the Sum, or the Distance of the Party requires, and Proceedings ordered to stay in the mean While.

Contempts.

But, if the Defendant be in Contempt, the Court will *grant* it without bringing the Money into Court, though

though there have been Proceedings at Law. And so if Matter be confess'd in the Answer sufficient for a total Relief, the Court will do the same.

Though 'tis said, an Affidavit is not ordinarily to be made use of against an Answer, yet where an Executor, by his Answer, swore a certain Sum due, the Court upon Affidavits of Strangers to the Suit *continued* the Injunction, without ordering the Money to be brought into Court, because there appeared Reason to doubt, whether it were due; and the Executor is not privy to the Transactions of the Testator: And so 'twas said it would have been, if by Writing or any other Matter shewed the Court, it might seem doubtful whether the Money were paid.

To Executors.

The Defendant being considerably indebted *on Account*, &c. to the Complainant's Testator, disburs'd Money about the Funeral at the Executor's Request, for which he brings an Action at Law against the Executor, who brought his Bill here, praying an Account, and Stay of the Proceedings at Law, and had an Injunction, which the Defendant pray'd might be *dissolved*, at least as to what related to the Monies so by him disburs'd. But the Court said, It was to be suppos'd he design'd to have it allowed in the Account, when he so disburs'd it, (and so he should) and therefore the Injunction was continued.

On Account.

The Administrator of a Sailor orders *A.* to receive Money due to the Sailor: He does, and puts it into a Goldsmith's Hands: A Will appears, of which and the *Probate* the Executor gives *A.* Notice before the Money was paid to the Administrator, &c. He refuses to pay the Money to the Executor, who thereupon sues him at Law: He brings his Bill, and the Executor in his Answer swears Notice, as aforesaid. The Court ordered the Money to be brought into Court, or the Injunction to be *dissolved*. Legatees sue in the Ecclesiastical Court, that the Executors might prove the Will, and pay their Legacies; the Executors exhibit a Bill to prove the Will here, it being of Lands as well as personal Estate, and stay Proceedings in the Ecclesiastical Court, and offered by their Bill to pay the Legatees, if there were Assets. The Court ordered an Injunction, and that it should *continue*; the Executors

Administrators.
Will and
Executor.

Legatees.

tors

tors giving Security here to perform the Will, and speeding the Cause.

Leases.

Statute of
Frauds.

Agreements.

Mortgage-
Covenants.

Actions
Of Barrettry.

On the Case.

Debt.

Account.

Awards.
Vide supra.

A Lease was made for 7 Years, the now Defendant had Judgment in Ejectment against the Complainant by Reason of the *Statute of Frauds*, for the Lease was only put into Writing by one present, without Order of the Parties. The Complainant prayed Relief here, and with Affidavits produced some Acquittances or Receipts for the Rent, which say, *according to an Agreement* with the Defendant. The Court said, there might be equity in the Matter, for the Receipts are Evidences of an Agreement; and this Court will not interpret the *Statute of Frauds* so rigorously, as the Courts at Law: And however it was hard to turn a Tenant out, &c. And though the Defendant had sworn the Agreement was to continue but for the Life of the Plaintiff's Husband now dead, and that the Rent was to be paid in Corn, which was cheap, yet the Court ordered the Injunction to *stand*, the Cause to be speeded, the Plaintiff in the mean while to pay the Rent and Repair, *according to Agreement*.

If a Mortgagor brings a Bill here to redeem, this at Law is accounted a Breach of Covenant for quiet Enjoyment; and yet if an Action of Covenant be in such Case brought, this Court will *grant* an Injunction.

Where many Actions at Law are brought by the same Plaintiff against the same Defendant for the same Cause, this being in the Nature of *Barrettry*, the Court here will grant an Injunction to *stay* the Proceedings in all of them but one.

If an Action on the Case be prosecuted at Law, and the Defendant brings his Bill here, &c. and the Defendant here by his Answer swears Money due, the Court will commonly *dissolve* the Injunction, except the Complainant will give a Judgment at Law *in Debt* for the Money sworn due, and a Release of Errors.

Where by the Answer it appears to be Matter of Account that is in Question, and the Demand is very uncertain, the Court will commonly *grant* or *continue* an Injunction. *Vide supra.*

The Court ordered Money sworn due on an Award to be brought into Court, or the Injunction to be *dissolved*;

solved; for by the Award 'tis become *Res judicata*, viz. equal to a Judgment.

Where upon the Face of the Answer there appear'd a strong Presumption of Equity for the Complainant, the Court *continued* the Injunction to stay a Trial at Law. As where *A.* made a Grant of *Post-Fines* to *B.* with a Covenant that he had Power to grant, &c. but *B.* was not to pay the Rent till peaceable Possession. *B.* brings an Action at Law on the Covenant of *A.*'s Title or Power to grant; *A.* prays to be relieved, and the Matter being confess'd by the Answer to be as set forth by the Complainant, the Court *continued* the Injunction to stay Trial. For staying Trial.

Where there is a Verdict at Law, and the Defendant exhibits his Bill for Relief here, the Money must be deposited here before an Injunction will be granted, except in some Cases, where special Matter of Equity appears by the Defendant's Answer, or some former Decree, or such like. On a Verdict.

A Judgment was at Law on a Bail-Bond, a Bill brought here, and an Injunction. The Defendant in his Answer swears 8*l.* due to him for Work done; the Money was ordered to be brought into Court, &c. Though the Court inclined to have the Injunction *continued* without that, seeing there was a Judgment at Law: But in regard it was so small a Sum, it was ordered to be brought in. On Judgments.

A. by Obligation was bound to *B.* for Payment of 100*l.* and indebted to him for Rent 100*l.* more; an Action was brought at Law on the Bond, and Judgment had on the Bail-Bond. The Complainants pray to be relieved against the Bond, Judgment, &c. and had an Injunction. The Defendant by Answer owns the 100*l.* on the Bond satisfied; the Court ordered the Defendant at Law should give a Release of Errors, and the Injunction to stand as to that, but to be dissolved as to the Rent. Judgment on a Bail-Bond.
Release of Errors.

The Bill alledged, That the Plaintiff is indebted to the Defendant in 50*l.* and the Defendant in 30*l.* to him; That the Defendant is a Prisoner in the *Fleet*, sues at Law, has an Interlocutory Judgment, and will not pay or allow what he owes; and thereupon prays an Account, &c. and has an Injunction. The Defendant On mutual Debts, &c.
by

Judgment
and Release
of Errors.

For staying
Execution,
&c.

For staying
Money in the
Sheriff's, &c.
Hands.

After a Writ
of Error, &c.

On Cross-
Bills.

Q

by his Answer says, he returned the Money due to the Plaintiff to him at *London* in *December* last. The Plaintiff produced the Note, by which it appeared the Money was not due to him till *April* next: The Court ordered, That upon the Complainant's giving a final Judgment at Law for 200*l.* the Sum demanded there, and a Release of Errors in four Days, the Injunction do stand.

Note, An Injunction is sometimes granted to *stay Execution*; as where Judgments are entred by Assent of Parties for Security of Money borrowed. And if Money be recovered at Law, and the Defendant bring his Bill to be relieved here on Condition the Plaintiff pay the Money and Costs recovered at Law into Court here, subject to the Order on hearing, this Court will commonly order an Injunction, and will in the mean while stay Execution, and give some time for paying in the Money; with this further, That the Defendant here be at Liberty to affirm his Judgment, if a Writ of Error be pending; or if there be none, that the Complainant give a Release of Errors.

Also, if Goods are taken, or Money levied or paid in Execution, and in the Sheriff's or other Officers Hands, this Court will sometimes stay them there by Injunction. As where Money levied on a *Fieri fac.* was in the Secondary's Hands, the Complainant pray'd an Injunction till Answer; and the Court granted it, and said, Such Injunctions had been granted, where the Money was not secured, as here it was; and that this was the easiest (with respect to the now Defendant) that ever was granted.

The Defendant here had Judgment at Law, the Complainant had brought a Writ of Error, and then brings his Bill here, and has an Injunction. The Defendant being in no Contempt, but having taken a *Dedimus* prays Leave to affirm his Judgment. It was granted him, but he to proceed no further till further Order.

Where there were Cross-Bills the Court said, If after the first Bill is answered, the Plaintiff in such first Bill do not answer the second Bill in eight Days, the Injunction shall be dissolved on Petition.

Where

Where a Bill is taken *pro Confesso*, by Reason of the Defendant's Contempt in standing out all Process, if the Bill prays an Injunction to quiet a Possession, or to stay the Defendant's Proceedings at Law, the Court will decree a *perpetual* one. One Bill taken *pro confesso*.

Exceptions alone are not a sufficient Cause for *granting* an Injunction, because they are often put in for Delay; but there must be also a Report of the Answer's Insufficiency, *Per Cur.* Yet where an Injunction is already granted, it will be *continued* on Exceptions; and where Exceptions came in but the Night before the Motion, the Court has refused to dissolve the Injunction. But if a Report is not procured upon Exceptions in a reasonable Time, or if the Answer be reported sufficient, &c. the Injunction will, upon Motion, be ordered to be *dissolved, nisi Causa*, &c. On Insufficient Answers, and Exceptions to Answers, &c. *Vide Answer ante.*

An Injunction to stay Waste must be had upon a Bill filed to that Purpose, and is commonly granted for him in Reversion or Remainder against Tenant for Life, or other particular Tenant, to stay Waste in Houses, Woods or Timber, where 'tis begun to be done, or reasonable Cause to fear it will be done; or to prevent or hinder the Ploughing of ancient Meadows, not ploughed up of 20 Years before; or for the Preservation or Maintenance of Inclosures of 20 Years standing, or more; or to hinder the Doing of any other Spoil or Waste in Lands. Injunction to stay Waste. For whom it lies, and in what Cases.

Injunctions against the Selling of Timber, or Ploughing of ancient Pastures, or for Maintaining Inclosures, shall be granted according to the Circumstances of the Case; but not where the Defendant claims by his Answer any Estate of Inheritance, except where he claims only in Trust, &c. or upon some other special Ground. Not of a State of Inheritance.

If the Defendant shew that he has an Estate without Impeachment of Waste, it is ordinarily a good Cause to *prevent* or *dissolve* the Injunction. *1 Chanc. Rep. 242.* Or without Impeachment, &c.

And, *note*, Waste cannot ordinarily be committed on Commons or waste Grounds. Or on Commons.

Yet, 'tis said, this Writ is sometimes granted to stay Spoil (or Waste) even against him, that may by Law or Provision of the Parties do it, where the Doing it

Un'ess maliciously done, &c. seems malicious, and against the publick Good; as Cutting young Timber, Prostrating Houses, and the like.

Hospital Lands.

So in the Case of Hospital Lands (lately decreed by this Court) the Court, partly from the Defendant's own Confession, partly because the Complainant seem'd not to design to renew to the present Tenant (the Defendant) when his Lease was out, and being pretty well satisfied there was Danger Waste would be done, they granted this Writ, and that even without any Affidavit. *Vide infra*.

Warren.

This Writ was prayed to restrain a Tenant for Years from doing Waste in a Warren, upon Affidavit of several great Numbers of Conies destroyed at unseasonable Times: It was also alledged, that he cut Timber-Trees, &c. The Court said, an Injunction might as well be granted to keep a Man out of Possession of his House. But it being urged, that it was a very considerable Warren, and the Lessee's Term near at an End, it was granted.

Lessees.

Mortgagees, &c.

But though this Court will stay a meer Lessee from doing Waste, yet not (or not easily) a Mortgagee. And 'tis said, an Injunction for staying Waste is to be granted against those only, who claim or hold either mediately or immediately under him, that prays it.

Affidavit needful.

Note, Though a Bill is exhibited, yet ordinarily an Affidavit of Waste, committed or threatned, is necessary to induce the Court to grant the Injunction: But yet sometimes on filing the Bill, and before *Subpoena* served, the Court will grant it without such Affidavit. *Vide supra* Hospital Lands.

For quieting Possessions.

This Writ of Injunction is sometimes granted for quieting a Possession of corporeal Things, as Houses, Lands, &c. But it is not to be granted for such Purpose, but only where the Possession has continued in the Plaintiff for three Years before the Exhibiting of the Bill, and that upon some good Title, and not upon any Title by Leave (or at Will) or determination of which the Court must be satisfied by Oath. And 'tis said, the Plaintiff must also have such Possession (or rather Title) continuing in him at the Time of the Motion; and that the Injunction is to be given only for such a Possession (or Title) as he then hath.

In what Cases, and on what Titles

Note, Where the Defendant was in Possession at the Time of the Bill exhibited, and the Plaintiff afterwards entered, an Injunction was granted against the Plaintiff to avoid the Possession. And in another like Case the Defendant prayed he might have an Injunction, or the Bill be dismiss'd: And the Court held it reasonable that he should have one or the other. *Cary's Reports*, 51, 63, 140.

An Injunction for Possession before hearing hinders not the Defendant's Suit at Law, making a Lease, taking a Distress, &c. and it may, as in other Cases, be dissolved on Cause shewn. Dissolved on Delay.

'Twas said, A perpetual Injunction to quiet Possession is only to be granted where there has been a long and uninterrupted Possession. But it is sometimes also granted upon a Decree made, or where there have been several Trials at Law, and Verdicts for one Party, or in the Cause *ante p.* 449. A perpetual Injunction on long Possessions, Or Verdicts.

An Issue was directed to be tried, whether a Will or no Will, and found *no Will*; and thereupon a perpetual Injunction was awarded against the Defendant, not to prove the Will in the *Prerogative Court*, though touching Personal Estate. *1 Chan. Cas.* 80. Not to prove a Will.

Sometimes, pending the Suit, the Court will order a Party the Possession, or that the Rents not already paid should be staid in the Tenants Hands till Hearing, and sometimes both. At other Times it will order a Receiver, who shall take the Rents and Profits, and pay them into Court, or account for them, when the Court shall require; and he to enter into such Recognizance, as the Court directs to secure his doing so. Rents staid. Receiver appointed.

The Lord of a Manor brings Ejectment against his Customary Tenants, upon Pretence of Forfeiture: The Tenants bring a Bill here, praying he may shew what Breaches of the Custom he designs to insist upon at the Trial, upon the general Issue in Ejectment; and he being in Contempt, the Court, without entring into the Merits, ordered an Injunction. Actions staid. Ejectment.

The Plaintiff went over the Defendant's Ground into his House to serve him with a *Subpoena* of this Court, for which the Defendant brought an Action at Law, *Quare Domum & Clausum fregit*; and upon Motion here Trespass.

Of Certiorari-Bills.

Perjury.

the Action of Trespas was stayed by Injunction. Where there was a Prosecution at Law for Perjury in this Court, the Court granted an Injunction, the Cause here not being yet heard.

Suits on 2 E. 6. c. 13.

And this Process is said to have been heretofore very frequently granted to stay Suits upon the Stat. 2 Ed. 6. c. 13. for treble Damages for not setting out Tythes, (conceiving, I suppose, the Penalty too great) and the Party sent to the Ecclesiastical Court.

Privileged Persons.

If a privileged Person of this Court is sued elsewhere at Law, he may stay the Suit by Injunction; for he should be sued in the *Petty-Bag-Office*, and not elsewhere. And yet 'tis said, that Suits in the *Petty-Bag* by *Scire fac.* or *Privilege*, are not to be staid by Injunction, but by Order. *Vide chap. 18.*

Injunction disobeyed.

Where an Injunction is disobeyed, on Oath thereof, Process of Contempt is to issue against the Contemnor, as in other Cases, till he yield Obedience: Nor is he to be heard in the principal Case, till he has yielded Obedience thereto.

How served.

This Writ is served by being shew'd under Seal, and a Copy thereof delivered; and this Service must be *personally* on the Party himself, his Council, Attorney, Solicitor, &c. or such of them, as can be found, or the Case may require. And yet 'tis said the Leaving it with the Attorney or Solicitor's Clerk or Servant is good Service.

Enrolled or filed.

Note, Injunctions ought to be *enrolled*, or the Transcripts thereof *filed*.

Of Certiorari-Bills.

In what Cases brought.

A *Certiorari-Bill* is where a special Writ of *Certiorari* is thereby prayed for removing a Cause out of an inferior Court of Equity; as the Ecclesiastical Courts, Court of Admiralty, *County-Palatine* Courts, or the like, upon Suggestion that the Cause is out of its Jurisdiction, or that the Witnesses live out of the Jurisdiction, or that the Defendants do, and are not able by Age and Infirmities or Distance of Place, to follow the Suit there; or that for some Cause equal Justice is not like to be done in such Court. So that a *Certiorari-Bill* is somewhat of the Nature of an *Injunction-Bill*, as

to the Jurisdiction of inferior Courts, only this may be brought before any Proceedings had there, and the *Certiorari*-Bill after Sentence, &c.

The Writ of *Certiorari* prayed by such Bill is granted by the Lord Chancellor upon Motion, and a Certificate from the Six Clerk, that the Bill is filed; and is commonly directed to the Judge of the inferior Court, requiring him to certify or send to this Court the Tenor of the Bill or Plaint there, with the Process and Proceedings thereon; and upon Receipt of the Writ, a Bond to the Master of the Rolls is to be entered into by the Plaintiff before the Register, with Condition, that the Bill exhibited contains Matter sufficient to bear a *Certiorari*, and that the Plaintiff prove the Suggestion of his Bill in 14 Days after the Return of the Writ (which is returnable *infra quatuordecim dies post receptionem ejusdem* by the Defendant) and if the Plaintiff fail to make his Proofs within the Time, a *Procedendo* may be awarded to the inferior Court, except the Plaintiff shall get an Order in the mean while for further Time to make his Proofs upon Affidavit of the Remoteness of his Witnesses, or other good Cause.

Writ of *Certiorari*.

How granted on a Bill filed,

And Bond entered into.

Ret. Brov.

Note, Because a *Certiorari* was made with a long Return, (*viz.* skipping over a Term) a *Procedendo* was awarded. *Vide plus de Certiorari infra.*

Procedendo.

" Note. a *Procedendo* is a Writ directed to the Judge of an inferior Court, requiring him to proceed in any Cause, which is removed hither by *Certiorari* or other Writ, or staid for a Time by *Superfedeas*. The Service of a *Certiorari* implies a *Superfedeas*.

Procedendo.

Though the Plaintiff is to examine Proofs, and have Publication within fourteen Days after the Return of the *Certiorari*, as to his Proving the Surmises of his Bill, and Giving the Court Jurisdiction, yet the Defendant is not to examine to, or publish any Thing to disprove it: And though the Defendant should examine as soon as answer, yet the Depositions shall not be published but in ordinary Course; for after the Plaintiff's first Examination to prove his Suggestions as to the Jurisdiction, if the Court retain the Cause, both

Examining Witnesses, and Publication.

Parties are to examine orderly as to the Merits and Body of the Cause, and to have Publication according to the ordinary Rules.

Where a *Certiorari* lies.

Two Plaintiffs here sue for Lands in the County-Palatine of *Durham*; one of them lives in *Middlesex*, the other is an old infirm Man, and not able to follow the Suit; therefore a *Certiorari* was granted to the Chancellor of *Durham* to certify the Proceedings depending before him into this Court. *Chan. Rep. 62.*

Where not.

This Writ lies not upon an *English* Bill to remove *Latin* Proceedings out of a Court of Law into this Court, which cannot in that Way hold Plea thereupon. Nor shall the Plaintiff in an inferior Court of Equity remove the Proceedings hither by *Certiorari*.

Another Kind of *Certiorari*.

There is another kind of *Certiorari*, which is used for certifying some *Record* remaining in another Court, or some Person's Custody, and necessary to be produced in a Cause depending here, and directed to other Persons than the Judges of such Courts, as a *Certiorari* to the Clerk of the Parliament, to certify the Tenor of an Act of Parliament; or to the Treasurer and Chancellor of the *Exchequer* to certify out of *Doomsday-Book*, Whether a Manor be held of the Crown in *Ancient Demeasne*, &c.

Writs Remedial, and of Right to be had on Petition or Motion.

Besides these Bills for Writs of Idjunction and *Certiorari*'s, there have been formerly in Use divers other Bills of like Nature; as Bills for Writs of *Ne Exeat Regnum*, *Homine Replegiando*, *Habeas Corpus cum Causa*, &c. But these being Remedial Writs are in their own Nature Writs of *Right* (though formerly held Writs of *Grace*) and therefore may be had upon Petition or Motion, without any such Bill filed.

Ne Exeat Regnum.

Common Law.

A *Ne Exeat Regnum* is, as the Name imports, a Writ to restrain a Subject from going out of the Kingdom. And, *Note*, by the Common Law any Man might go out of the Realm at his Pleasure, without the King's Licence, except he were restrained therefrom by Proclamation, Writ or Mandate under the Privy-Seal or Signet. But by the Stat. of 5 R. 2. c. 2. none, except Lords and other great Men, notable

5 R. 2. c. 2.

Merchants and the King's Soldiers, were to go out of the Realm without the King's special Licence.

This was formerly reckon'd a Writ of Grace (when on Behalf of a Subject) and used to be granted at the meer Pleasure of the Court on an Affidavit or other Matter, shewing the Party designed to go out of the Kingdom to the other Party's Damage. Yet a Defendant could not have this Writ on Affidavit, &c. as a Plaintiff might. But in the Time of the Lord Keeper Wright it was declared *per Curiam*, that this being a Remedial Writ is, as such, upon due Application or Motion, to be granted to the Subject.

How obtained,

By Petition or Motion. By whom.

And *note*, any one, by Surmise made to the Lord Chancellor of the Party's going beyond Sea, might have had this Writ for or on Behalf of the King. *Fitz. Nat. Brev.* 85.

'Tis now mostly used where a Suit is commenced in this Court against a Man, and he designing to defeat the other of his just Demand, or to avoid the Justice and Equity of this Court, is about to go beyond Sea, or where a Debt or Duty will be endangered, if he goes.

In what Cases.



This Writ was formerly directed sometimes to the Party himself, sometimes to the Sheriff or Justices of the Peace, or both; but now 'tis commonly directed to the Sheriff only.

How directed.

Note, The Party, that sues it, commonly marks on the Back of the Writ in what Sum the Bond for yielding Obedience to the Writ shall be, which is generally 1000*l.* or some other great Sum, for which a Bond is to be given to the Master of the Rolls accordingly.

How executed. Writ marked. Bond given.

It was declared *per Cur'* to be an Abuse to this Process to break open Doors, and take the Party in his Bed: But yet the Court would not order him (for this Cause) to be set at Liberty.

Party arrested.

If the Writ be sued for the King, the Party, against whom it is issued, may come into this Court, and (upon good Cause shewn) obtain a Licence by Letters Patents, or by Privy-Seal or Signet, (which are call'd a *Pass* or *Passport*) any of which will excuse, or discharge him from Contempt.

How discharged for the King.

For a Subject. If the Writ be granted on Behalf of a Subject, and the Party taken, he either gives Security by Bond, as aforesaid, or satisfies the Court by Answering, (where the Answer is not already in) or by Affidavit, or otherwise, that he designs not to go out of the Realm, and gives such reasonable Security, as the Court directs, and then he is discharged.

How superseded.

While this was accounted a *Writ of Grace*, if the Party, against whom it issued, had answered and denied the Equity of the Plaintiff's Bill, and the Court saw no Cause to the contrary, the Writ would be *superseded*; and so it will now, I suppose,

Homine Replegiando.

Where it lies, and how obtained.

A *Homine Replegiando* is a Writ that lies against one, who conveys away secretly, or keeps in his Custody another Person against his Will; and it is obtained upon an Affidavit or Oath made of the said Matter, and a Petition to the Lord Chancellor, who thereupon grants the said Writ with an *Alias* and *Pluries* directed to the Sheriff, and he thereupon returns an *Elongatus*, and thereupon issues a *Capias* in *Witbernem*, to take the Body of that Person, that has so conveyed away, or keeps in his Custody another. And when such Person is taken on the *Capias* in *Witbernem*, the Sheriff cannot bail him: But the Court may, if they think fit, grant a *Habeas Corpus* to the Sheriff to bring him into Court, and bail him, or remand him, as they see Cause.

Prochein Amy.

This Writ was moved for two Infants, Plaintiffs in a Cause here, the Defendant having gotten them out of the *Prochein Amy*'s Custody; the Court said, tho' he that pray'd the Writ be *Prochein Amy*, yet perhaps he is not *Guardian*. The Defendant's Council said, he was *Guardian*----*Cur*. Let the Plaintiff shew an Order for his having the Custody of them, and then the Writs will be proper; or if you will, you shall have an Order *Nisi*, that they may give some Account of the Children, and where they are.---- Thereupon the Defendant read an Affidavit of one of the Infants, whereby she swears, that she went to the Defendant's House, with the Knowledge and Consent of the *Prochein*

shewin Amy, ordered however, *Nisi Causa*, and said, perhaps at the Day of shewing Cause, the Court may think fit to proceed by Order without Writ.

Habeas Corpus.

A *Habeas Corpus* is a Writ directed to the Keeper of the Fleet, or some other, to bring into this Court the Body of some Person in his Custody, and is had on Petition or Motion, *ut supra*.

How obtained,

It is commonly used in Order to a Party's Answering and Clearing his Contempt, so as he may be either discharged or fined; or such Order may be made touching the Matter, as the Court shall see Cause: And sometimes where a Person apprehends himself to be wrongfully imprisoned by any one, he brings this Writ, in Order to procure his Enlargement: And this is called a *Habeas Corpus cum Causa*.

And in what Cases.

Hab. Corp. cum Causa.

It is served by delivering the Writ to the Keeper or other Person, in whose Custody the Party is, and keeping a Copy thereof: And if he obey it not, then issues an *Alias*, and so a *Pluries*, which if he yield not Obedience to, nor makes some Return, excusing his *Non-Obedience*, and which the Court shall think sufficient, then if he be an Officer or Minister of this Court, and it be touching a Cause depending here, the Court will punish his Contempt.

How served and executed.

Contempt.

But if it be for a Matter at large, the Party has his Remedy by the Statute of 30 Car. 2. cap. 2. If the Keeper of a Prison do not yield Obedience to the Writ, as there required.

30 Car. 2. s. 2.

A Prisoner in a Gaol in the Country, being in Contempt for not performing a Decree, may be brought up by this Writ, and turned over to the Fleet, whence he is not to go till he has obeyed the Decree of this Court. 2 Chan. Rep. 151, 192.

I have already shewn in divers Parts of this Treatise the Nature and Use of *Bills ad Scētam*, *Cross-Bills*, *Bills to perpetuate Testimonies*, *Bills of Revivor and Review*, and also of *Bills for Injunctions* and *Certiorari's*, &c. *ut supra*; it remains that I here add a Word or two touching *Bills of Enterpleader*, and *Supplemental Bills*.

Of

Of Bills of Enterpleader, and Supplemental Bills.

Enterpleader. An *Enterpleader* properly is, where two or more claiming the same Thing by different or separate Interests, pray the Judgment of the Court to which of them it belongs.

Bill of Enterpleader. But that, which is commonly called a *Bill of Enterpleader*, is a Bill exhibited by a third Person, who not knowing to whom he ought of Right to render a Debt or Duty, fears he may be hurt by some of the Claimants, and therefore prays, that they may enterplead, so that the Court may judge to whom the Thing belongs, and he thereby be rendered safe on the Payment, &c.

In what Cases brought. Sometimes a Bill of Enterpleader is, where one, who is not Party in the first Suit, supposes he has a separate Interest in the Matter in Question, and commences his Suit against the first Defendant, praying to be relieved according to his Right: Whereupon the first Plaintiff makes the second a Defendant, in Order to enterplead and contest the Right: Or, if the first Plaintiff does not make him a Defendant, then the Defendant may exhibit his Bill against both Plaintiffs, and pray they may enterplead, and try to which of them the Thing in Demand belongs, and further, as his Case requires. Or, if there be no Suit here between the Pretenders, he, who has Suits at Law brought against him, or is in Danger of Trouble from both the Claimants, may file his Bill against them, and pray that they may enterplead, and that the Proceedings at Law against him may stay till the Right be determined.

How obtained, &c.

The Plaintiff, in a Bill of Enterpleader, must annex to his Bill, or upon Filing thereof, make an Affidavit, that there is no Collusion between him and any of the Parties, and must also bring the Money into Court; till which be done, the Court will not commonly order an Injunction, or shew the Plaintiff any Countenance.

Inter Mortgagor and Mortgagees, &c.

A Mortgagor brings his Bill to redeem; after come the Assignees of the Mortgagee with a Bill of Enterpleader: Whereupon the Mortgagor makes them Defendants

endants to his Bill: They answer and say, they are ready to receive the Money. By the Enterpleader, and Delay of Proceedings thereupon, the Mortgagor keeps the Money by him two Years: He prays he may now pay it into Court, to save further Interest, which the Court would not order, but gave Leave to the Mortgagor to set down the Cause for hearing against all the now Defendants on Bill and Answer.

Any Alteration of the Bill, before the Cause is at Issue, is done by Way of Amendment; and this is called *Supplemental Bills*.

An Amended Bill. *Vide ante p. 39, 209.* But where new Matter happens, pending the Suit, and after Replication, or that the Cause is at Issue; which Matter is necessary for the Plaintiffs to set forth to the Court; this cannot be done by Way of Amendment: But in such Case, on Affidavit made of such new Matters arising, the Court will give Leave to file a *Supplemental Bill*.

So that a Bill, altered before the Cause is at Issue, &c. is called, *An Amended Bill*; but if any Addition or Alteration be made after, it must be by another distinct Bill called, *A Supplemental Bill*; and this must shortly recite or mention the former Bill, and add, alter or supply what is necessary.

C H A P. XVII.

Of Parties to the Suit, and what Persons are more especially favoured here, viz. Infants, Ideots, Lunatics, Guardians, Prochein Amy's, Trustees, Feme-Coverts, Heirs, Executors, &c. And also Paupers.

IN all Suits in Equity great Care is to be taken, *Want of proper Parties.* that there be proper Parties named in the Bill, for and against whom the Court may respectively make a Decree: For if upon the Face of the Bill it appears that any, whose Right or Interest is concern'd, or who ought

ought to have been, are not made Parties therein, the Defendant may demur to such Bill; or if he does not, yet the Court, upon hearing, will not, for Want of them, proceed to a Decree; or if it does, the Decree may be revers'd; or if it be not revers'd, yet none, but such as were made Parties to the Suit, and those claiming under them, can be bound by the Decree.

Suits in ones
own Name or
another's.

A Suit in this Court is generally to be prosecuted or defended by each Party in his own Name only; but sometimes it may be done by another, *i. e.* by Leave of the Court, as *Prochein Amys* or Guardians in the Case of Infants and Lunaticks, or Committees in the Case of Ideots, or Trustees in Cases of *Cestuy que Trust*.

In his own
Right or a-
nother's, or
both.

So a Suit may be here, either in the Party's own Right, or in the Right of another, or in both; of the first Sort are most Suits in this Court; of the second Sort are Suits by Executors, Administrators, Trustees, &c. Of the last Sort are Suits by Baron and Feme for Lands, &c. of the Wife's Right.

Executors.

'Tis said, if the Legatee of a Term sue for it here, the Executor must be a Party, tho' he hath assented to the Legacy. *Note*, No Interest shall be paid for a Legacy till Demanded, whatever it be charged upon, except a Time of Payment be appointed by the Will; and if none be appointed, a Year's Time is generally allowed. *Vide 1 Chan. Cases 177.*

Legacies.

Baron and
Feme.

Ordinarily the Wife must not sue without her Husband, yet in Cases of Separation, or some unreasonable Dealing of the Husband, or his being beyond Sea, &c. she may. *Cary's Rep. 124.* In like Manner a Trustee may in some Cases sue in his own Name, but ordinarily *Cestuy que Trust* must be made a Party.

Trustees, &c.

Where several
Parties
may join or
not.

Ordinarily several Plaintiffs may not join for different Causes, nor may several Defendants be put in one Bill, where the Cause and Charge against them is altogether different. Yet sometimes, for avoiding Multiplicity of Suits, and to bring all Parties, who may be affected by the Decree before the Court, the Suit is by or against divers Parties, who have separate Rights or Interests, as Devisees, Legatees, Creditors, and the like.

Care

Care likewise should be taken, that whosoever sues in his own Right, has no legal Disability upon him, as Outlawry, Excommunication, *Alien Enemy*, &c. for such Disability may be pleaded in Bar, as before is shewn, p. 185, 197, 211, &c. But where *Alien Enemies* by Permission, come hither for Refuge, and live peaceably, the Court will greatly discountenance such Plea.

Disability of Parties.

By Motion of Course, either Plaintiffs or Defendants may add Parties *before Answer*. Also any Time *before Publication*; the Court, on Cause shewn, will suffer the Plaintiff to amend his Bill, and add Parties, and this *without Costs*, if there be no Plea, or Demurrer; and if the Addition, or Amendment, be not so great, as the Defendant will need a new Copy of the Bill, nor need put in a further Answer, and that the Plaintiff amend the Defendant's Copy according to such Addition or Amendment.

Of adding of Parties.

After Answer, Or Publication.

And 'tis said, the Court, even after Publication, and any Time before Hearing, will upon Cause shewn, suffer Parties to be added. But, *note*, if a Defendant be added after Publication, the Cause, as to such Defendant, must be heard upon Bill and Answer only.

'Tis also said, That after a Decree pronounced, &c. and before 'tis enrolled, any Persons interested may by Petition be made Parties, and let into it, if their Rights, &c. be interwove with the other Plaintiffs, and settled *in general* by the Decree, they paying the Plaintiffs a proportionable Part of the Charges of the Suit, &c.

Or a Decree.

Before a Defendant has answered, his Name may, on the Plaintiff's Motion, be struck out of the Bill; if a Defendant answers and disclaims, or if he appears to be a disinterested Person, his Name may commonly be struck out on Motion either of the Plaintiff, or Defendant. *Vide Disclaimers*, p. 129, 131, 133. So a Defendant may be struck out at any Time before Hearing: But if it be *after Appearance*, it will be with Costs, the Bill as to him being dismiss'd.

Parties struck out.

Defendants.

Also Plaintiffs may be struck out of the Bill at any Time before Hearing, so that those left are sufficient to answer the Costs; or if they are not, yet it may perhaps be allowed upon giving Security to answer the Costs.

Plaintiffs.

If

If one be named a Plaintiff, without his Privy or Order, he may come into Court, and renounce the Suit; or he may give a Warrant under Hand and Seal to some Council, to move and consent that the Bill be dismiss'd; or if there be more Plaintiffs, that it may be dismiss'd as to him. *Vide ante p. 348.*

Suit abated.

If before Hearing, any of the Parties, Plaintiffs, or Defendants die, or if a Feme-Plaintiff marry, the Suit abates, and must be reviv'd by Bill. But if it be after Hearing, and the Decree inrolled, the Suit is ordinarily revived by a *Subpna Scire Facias*. *Vide ante Bills of Revivor, &c.*

Money brought into Court, tho' he, that paid it, was no Party.

A Purchaser exhibited his Bill to be relieved against a fraudulent Vendor, who by a Surreptitious Judgment at Law had recovered the Purchase-Money, and levy'd it upon the Bail, to whom the Court at Law had therefore ordered Restitution. Now upon Consent of the Plaintiff and Defendant in this Court, the Money levied was by Order paid into a third Person's Hands, who was to see if he could end the Matters between them by Reference; and if he could not, then the Money was to be paid into this Court, subject to the Order of the Court. The Referee does not end it, the Vendor prays the Money may be brought into Court: The Bail, who paid the Money, opposed it, because he was neither Party to the Suit, nor to the Order; and yet the Court ordered the Money to be brought in according to the former Order.

The King Plaintiff in Chancery,

Or Exchequer.

For a Trust of Lands purchased by an Alien, &c.

The Chancellor Plaintiff,

Or Defendant.

The King may sue in Chancery for Matter of Equity, as well as any of his Subjects; and so resolved, *Trin. 14. Jac. 1. inter Regem & Dominum Howard*: And so he may in the Exchequer, *Lane's Rep. 48.* As if an Alien purchase Lands in the Name of another, tho' the King is immediately entitled to the Trust, yet he must sue in Equity to have it executed. *Vide 1 Rol. Abr. 194. 1 Mod. 17.*

So the Chancellor himself may sue to be relieved in Equity, as was Chancellor *Uxenbridge*, 16 E. 4. 4. b. So Chancellor *Jeffreys* preferred his Bill in Chancery against *Daniel Witherly* Esq; to compel him to accept of the Residue of the Purchase-Money for the Barony of *Wem*. So a Bill may be preferred in Chancery against the Chancellor, and in both these Cases it is to be

be directed, *To the King's Most Excellent Majesty*. And neither the Chancellor, or any one deputed by him, can make any Order or Decree in such Cases (for none can be Judge in his own Cause) but such Causes must be heard, and all Orders and Decrees therein made by some Person or Persons thereunto especially delegated by the King. See the Case of Sir *John Egerton* and Lord *Darby*, 4 *Inst.* 213. 12 *Co.* 113. 1 *Roll. Rep.* 246, 331. How heard and decreed.

Touching Infants these Things may be observ'd, viz.

An *Infant* shall have the same Relief here upon a Breach of Trust, Fraud, or the like, as any other Person might. If a Bill be exhibited in this Court against an Infant, to examine a Title of Lands descended to him from his Ancestors, he may by Answer shew his Infancy, and pray Judgment, whether the Parol shall not demur till he comes of Age; so in such Case, if the Bill be against any other as Guardian, Friend, or Overseer of the Infant, such Party may shew the special Matter, and conclude with demanding Judgment, whether the Court will proceed therein before the Infant comes of full Age, *i. e.* 21 Years. Of Infants : Suits against them for Title of Lands.

But for other Matters, the Suit shall proceed against an Infant notwithstanding his Infancy; for the Court is to take Care that no Wrong be done him. And therefore it should seem an Infant may sue here as Plaintiff, either by himself, by *Prochein Amy*, or by Guardian, as the Court sees fit; and so it should seem he may defend by either of those Ways; and the Court, if he be of Years of Discretion (*i. e.* above 14) may order him to answer upon Oath; also an Infant of 12 Years has been ordered to answer in Person, but not upon Oath. Other Matters.
Infants, Plaintiffs or Defendants.

And 'tis said, If an Infant of tender Age will not appear to a Bill, he is to be brought into Court by Order, or by *Subpœna*, to be inspected, and then the Court will appoint him a Guardian, &c. And, *note*, an Attachment has been awarded against an Infant to make him chuse his Guardian. Also an Infant has been committed to the *Fleet* for disobeying a Decree. And if an Infant in any other Case run into Contempt, there Attachment.
Commitment

there shall commonly issue the like Process of Contempt, and a Serjeant at Arms, as in other Cases.

When Guardian, and when next Friend.

If an Infant has a Guardian assign'd him by the Court, or appointed by Will, yet where he is Plaintiff, the Course is not to call the Guardian by that Name, but by the Name of the next Friend: But where the Infant is Defendant, the Guardian is called by that Name: Yet if the Guardian be so called, tho' it is at Law, where the Infant is Plaintiff, 'tis no Cause of Demurrer.

Costs.

Of Age pending the Plea.

An Infant, after he had pleaded, came of Age, and then without any Cause shewn, prayed to amend his Plea, and it was granted; but he was ordered to pay 3 *l.* Costs.

An Infant suing here by Guardian, or *Prochein Amy*, after *Publication* past, came of Age, and the Cause coming to a Hearing, &c. it was alledged by the Defendants Council, That the Suit was abated, and no Cause in Court: But the Court gave no Way to this Exception; and to avoid Circuity of Action, proceeded to hear the Cause. And in such Cases the Course is to proceed to Hearing without any Change in the Proceedings. *Vide Moor 42.*

When bound by a Decree, or not.

If an Infant be Defendant, and sued here, and the Court assigns him a Guardian, and a Decree thereupon passes against him, 'tis said he is bound by such Decree. *Contra* where he is Plaintiff, and exhibits his Bill by Guardian.

'Tis also said, If an Infant be Plaintiff, he is bound by the Decree of this Court, unless there be a saving Clause for him therein; in which Case he may, upon Petition to the Lord Chancellor, within six Months after he comes of Age, have the Cause reheard.

But if the Infant be Defendant, there ought of Course to be such saving Clause in the Decree, upon which he may have the like Remedy; and if there be not such a Clause therein, the Decree is erroneous, and he may help himself by the Bill of Review.

To appoint Guardians.

For the general Jurisdiction, and Care of this Court over Infants, See 3 *Chan. Cases* 136. where 'tis declared, That Guardians are appointed by Writ for Infants, and one or more Guardians jointly.

That

That the Law is favourable to Infants, and that no Decree of this Court shall be had against them, but what they may shew Cause against, when they come of Age.

They may shew Cause against a Decree.

That this Court will make Strangers accountable to Infants, in Case they take the Profits of their Estate; and though a particular Person be appointed to take an Account, this Court can direct it shall be taken before the Court.

Strangers, &c. shall account to Infants.

That this Court, upon Application made to it by Guardians, will settle the Maintenance of Infants.

Maintenance for Infants.

But that in Case of Infants, this Court will never dispense with a Condition precedent, or take away the Right of one Infant and give it to another; or can it ever bind those Persons, that were never Parties to the Suit.

Will not take from one Infant to give to another.

Also, that where Infants take by Will, they are bound as strictly as other Persons. *Ib.* 132. So where an Infant is bound to perform a Condition. *Ibid.* 135.

Infants strictly bound.

Between the Date and Sealing of the Conveyance of Lands sold, the Lord *Morley* pass'd it to an Infant; but it was decreed against the Infant and him both. *Lady Russel's Case, Cary's Rep.* 30. 81.

Decrees to compel him.

A Copyhold was surrendred to the Use of an Infant, and the Infant to pay an Annuity to another till his full Age, which he refused, but was decreed to pay it and the Arrears thereof. *9 Eliz.* The Father being Tenant in Tail, sells his intailed Land, and leaves as much Fee Land to descend to an Infant; the Court ordered him, when he comes to Age, to pay the Money given for the Land, according to his Father's Will; or else that the Purchaser shall have the Free Land.

Copyhold.

Intailed Land sold.

Note. Though an Infant Executor assents to a Legacy, this is no good Assent, if there be not *Assets* besides to pay Debts. 1 *Chan. Cases* 257. Also *Assets* of an Infant Executor in the Hands of a Guardian, shall be liable to a Decree, though the Infant die before the Decree be enrolled. 2 *Chan. Cases* 199. And an Infant's Estate in a Guardian's Hands ought to be applied to the Payment of his Debts. 1 *Chan. Cases* 157. And where one made an Infant his Executor, to prevent

Executor. Legacies. Assets.

Debts.

Guardian.

Payment of his Debts, he was ordered by the Court to pay them notwithstanding.

Note.

Note. The Minority of an Infant, as to an Executorship, does not continue 'till he is 21 Years of Age, but ceases when he is 17. 2 *Chan. Cases* 168.

Judgments,
or Statutes.

Also, Though no Proceedings may be against an Infant on a Judgment, or Statute at Common Law, yet 'tis otherwise in this Court. 2 *Chan. Cases*. 164. Also an Infant may here be compelled to give a *Discharge* of a Debt due to, and receiv'd by him.

Agreements.

And in some Special Cases he shall be concluded by his Agreement: As, a Father being about to convey some of his Land to his younger Son, the elder Son promis'd to give the younger 100*l.* if the Father would forbear it; in this Case the elder being an Infant was ordered to perform it.

But regularly, though an Infant be 20 Years of Age, and makes a Contract never so much to his Advantage, &c. yet the Court will not conclude him, nor make any *absolute* Decree against him, though by his own Consent, or the Consent of his Parents, &c. except in some special Cases upon the Merits of the Cause.

Answer per
Guardian
sworn.

If an Infant answers by Guardian, the Guardian must be sworn; and if it does not appear by the Caption that he was sworn, the Answer will be quash'd.

A *Prochein Amy*, or next Friend, is usually taken for that Person, by whom an Infant, a Lunatick, or a Feme-Covert sues in this Court.

Suit per *Pro-*
chein Amy.

Where a Suit was by a *Prochein Amy*, who was not sufficient to answer Costs, the Court ordered another should be named as *Prochein Amy*.

Outlawry,
&c. no Dis-
ability.

Note. Outlawry, or Excomengement in a Guardian, or *Prochein Amy*, cannot be pleaded, or alledged in Disability, where an Infant, &c. sues, or defends by him; because he acts in *auter Droit*. The like of Executors, Administrators, Trustees, &c. that act in others Rights.

Guardian for
one *Non com*
per *Menti*.

As a Guardian may be assigned by the Court for an Infant, so it may be for *Non Compos Mentis*, or of unsound Memory, as a Commission to take the Answer of one of *non sane* Memory, or to plead or demur,

mur, or both; or to plead, answer and demur, as the Case is; but such a Commission cannot be to demur only, for a Demurrer may be put in without Oath.

The Commission for that Purpose recites, That *Commission* whereas the Court is inform'd, that by Reason of the *for that Purpose.* Party's Age, &c. he is of unsound Memory, therefore it commands, That if he is not well able to travel, they go to him, and by all Ways and Means, by which they may be better inform'd of his Condition, they carefully inspect and examine, &c. and if he be of unsound Memory, assign him a *Guardian*, &c. And having so done, to certify the *Guardian's* Name, and inform the Court of all their Facts, and of their Proceedings in the Premises.

See the late Act of Parliament, 6 *Anna* cap. 18. concerning the Chancellor, &c. their Authority to cause Guardians and Trustees to produce Persons suspected to be by them concealed, &c.

A Guardian by Common Law is removeable; not so where appointed by Statute: Yet the Court will compel him to give Security not to marry the Child, during Minority, without acquainting the Court. *Guardian to give Security not to marry the Child, &c.*
2 *Chan. Cases* 238:

An Infant was sent into *France* by his Uncle, without the Consent of the Guardian, a *Homine Replegiando* awarded, and the Uncle ordered to send for the Boy back again. *Id.* 137. *A Homine Replegiando against the Uncle.*

A Guardian made a Party to an Indenture, and bound by the Covenant of the Infant. 2 *Chan. Cases* 211. *Guardian bound by Infants Covenant.*

Decreed, That if a Guardian to an Infant, whose Lands are incumbered with Arrears of Rent to 600 *l.* Value, and he hath in his Hands of the Infant's Estate 100 *l.* and buyeth the 600 *l.* Arrears for 100 *l.* he shall not charge the Infant with the 600 *l.* *Id.* 245. *Guardian not to make Advantage to himself against the Infant.*

The Guardianship of a Lunatick is no Question or Disposition of *Right*, but of *Prudence*, and not to be committed to any that will make Gain of it. *Id.* 299. *Guardian of a Lunatick.*

Note, The Difference between Lunaticks and Ideots, for the Committees of the Ideots are not accountable.

Of Ideots, and Lunaticks, &c.

Ideots, after they are so found, are to sue and answer by the King's Attorney, &c. But *Lunaticks* most generally sue and answer by their Committees; and if the *Lunatick* be not named a Party in the Bill, or Information by the Attorney, it is commonly good Cause of Demurrer. 1 *Chan. Cases* 153.

But if the Bill in Nature of an Injunction, is to be relieved against some Act done during his Lunacy, he must not be named a Party, for that were to stultify himself. 1 *Chan. Cases* 113. *Note*, The King, or his Committee, has an Ideot's Lands in their own Right, by *Stat. Prerog.* but of a *Lunatick's* Lands they are only Trustees for the Benefit of the Lunatick; and therefore it seems a *Lunatick* must be named a Party: *Contra* of an *Ideot*, for he can have no Right in himself.

Lunacy denied.

A Bill was brought by a *Lunatick*; the Defendant denies the Lunacy at the Time of the Agreement, and offers to pay 200 l. pursuant to, and in Confirmation of the Agreement. The Court being moved for their Directions in it, the Plaintiffs would have had, that the Receipts might be general, or in Pursuance of the Order. The Court said, They might give such Receipts, as the Defendant desired, it could not harm the *Lunatick*, it being only the Committee's Act; nor should it prejudice them on the Hearing.

Dumb Man.

Note, A dumb Man was ordered to answer in this Court, 14 *Car. 1.* so he may be examined on Interrogatories; for he may signify his Assent, or Dissent, by Signs.

Senseless and Dumb.

And yet 22 *Eliz.* a Man both Deaf and Dumb was ordered not to answer: For such a one cannot hear, and by Consequence not understand the Questions asked.

Custody of an Ideot granted to one, his Executors, &c.

The Question was, Whether the Custody of an *Ideot* was grantable to a Man, his Executors, and Administrators, or for Life only, it being alledged such a Grant to Executors, &c. was never made before. The Lord Chancellor said, The Case of *Ideot* and *Ward* are not alike; the Wardship is by Reason of Tenure, the Idiocy by Prerogative: But the Case was put off, for he remembered a Defect in the Inquisition which

which found the Party not an Ideot a *Nativitate*, some certain Time. 2 *Chan. Cases* 70.

Bargain by a *Lunatick* eight Years before the Lunacy found avoided by being feigned a *Lunatick* with a Retrospect of 17 Years, yet the Party was admitted to traverse the Inquisition. 1 *Chan. Cases* 213.

Generally a *Lunatick* ought to be made a Party, but in the Case of *Jerome Smith* it was over-ruled, and said, the Reason was, That he might not stultify himself; for if he had been a Party, it had been to stultify himself, which the Law does not admit. *Ibid.*

And see 1 *Chan. Cases*, 153. *Woolrich's Case*. A Bill was brought by the Attorney-General, in the Nature of an Information, for the Benefit of a *Lunatick*, as in the Case of *Smith*; and the Defendant demurred because the *Lunatick* was no Party, which was ruled a good Demurter; but that in the Case of an Ideot 'tis otherwise: But a *Lunatick* may recover his Understanding, and then he may dispose of his Estate. *Smith's Case* was to be relieved against an Act done by the *Lunatick* at the Time he was so: But in *Woolrich's Case* the Bill was to be relieved upon a Marriage-Agreement for the Benefit of the *Lunatick* before he was a *Lunatick*, which did not tend to stultify himself, as the other did.

Bargain by Lunatick avoided.

Generally a Lunatick ought to be a Party.

Where a Lunatick must be a Party.

Difference of Cases.

A Man may not stultify himself.

Of Feme-Coverts.

Husband and Wife must ordinarily join in Suits here for Things in Right of the Wife, (in like Manner as at Law: But sometimes the Wife by her *Prochein Amy*, or next Friend, sues her Husband in this Court, as aforesaid; as where she sues him for Performance of a Marriage-Settlement, or the like: And sometimes she petitions against him, or sues him here for *Alimony*; as where he turns her away, or she goes away upon ill Usage: Also a Feme-Covert hath been allowed to sue here in her own Name, when her Husband was beyond Sea: So in Case where a Husband released the Wife's Debt, &c.

Baron and Feme.

Marriage-Settlement. Alimony.

'Tis said, Where a Wife is Defendant, you cannot regularly serve the Wife with Process to answer, with-

Feme Defendant.

Answers alone.

out serving the Husband also, though the Matter in Question concerns the Wife only. But though ordinarily the Wife must not answer alone, yet where Plate, &c. had many Years before been deposited with her, and the Bill was brought against the Husband and her, and he being in *Ireland* could not be brought to answer, she was ordered to answer alone. And frequently the Wife is put to answer alone, when the Husband is beyond Sea: Add where the Wife lives separate from her Husband, she is often ordered to answer alone, 1 *Chan. Rep.* 68. But if she answer alone without Leave, or Order of the Court, the Answer will be quash'd upon Motion.

On Order.

Suit abated.

Note, If the Plaintiff and Defendant intermarry, the Suit abates; and so if one of the Plaintiffs marry one of the Defendants, 1 *Chan. Rep.* 68.

Wife in Contempt, &c.

A Bill was against Husband and Wife (Daughter of the Plaintiff:) The Husband put in a Plea in both their Names, and swore it, but the Wife would not be sworn. It was ordered, That the Plea should stand for the Husband, and that the Plaintiff should proceed against the Wife by Process of Contempt, 1 *Chan. Cases* 296. And in some Cases the Wife has been committed without her Husband, *Cary's Rep.* 92. But ordinarily, if the Wife be in Contempt for any Matter in this Court, the Husband is also liable to Process of Contempt, and Commitment, as the Case requires.

Her Answer different from his void.

Yet, *Note*, the Wife's Answer differing from her Husbands shall not prejudice him; as where she is Executrix, and confesses a Trust, which he denies, one Witness will not be sufficient to prove this Trust; so that her Answer shall be taken as none, 1 *Chan. Cas.* 39. And 'tis said, No Decree can be had against a Feme-Covert for her Inheritance, if the Husband will not appear, &c. For her Answer is no Answer without his. *Vide* 2 *Chan.* 39. 173.

Husband cannot charge the Term of his Wife in Trust &c.

It seems the Husband cannot grant, or charge the Term of his Wife in Trust, 1 *Chan. Cases* 225. Nor forfeit it for Outlawry or Felony, *Ibid.* but 'tis otherwise of an Assignment after Marriage by the Baron in Trust for the Wife; for this is voluntary and fraudulent against Purchasers, 1 *Chan. Case Ibid.*

The

The Wife's Agreement in some Cases will here be ordered to conclude her, where the Merits of the Cause require it; as where a Man has Two Tenement of his Wife's, and they agree with the Tenant, That if he will surrender the one, he shall have three Lives in the other; and he doth so: And then the Husband dying, the Wife refuses to perform it; but was ordered by this Court to make it Good. But regularly it is otherwise; and therefore where she hath Lands with other Coheirs, and she with Consent of her Husband agrees to take a Thousand Pounds, to release her Right; the Judges did certifie she was not to be concluded, *Trin. 7. Jac. 1.* Yet in 10 *Jac. 1. Randall's Case*. A single Woman did agree, and after her Marriage subscribed her Name with her Husband to a late Agreement, and was concluded by this latter, by the Court's Order. But in *Slater's Case, 37 Eliz.* she and her Husband did article to forego her Joyn-ture, for other Recompence; and a Decree was made thereupon, but without her Consent in her Husband's Life-time; and after his Death, the Court will not bind to this Agreement.

Conclusive,

Or not.

A Lease of Land was made to two Friends, to her Use, to begin after her Husband's Death, and they two levy a Fine of the Lands, this will bar them in Equity. *Trin. 15. Car. 1.*

Trusts barred.

A. made over his Lease for Years, to the Use of C. his Wife, afterwards he and his Wife sold the Land, and levied a Fine to D. The Court ordered, That the Purchaser should enjoy the Land against the Wife, after the Husband's Death, 2 *Car. 1.*

Fine.

The Court ordered the Husband and Wife to levy a Fine of Mortgaged Lands settled in her; the Lady *Griffin's Case, 4 Car. 1.*

One was seised of Land to the Use of a Feme-sole, who after took an Husband, and her Husband sold the Land, the Wife had the Money, and she and her Husband desired the Feoffee in Trust, to convey it, and he doth so; yet it seems the Court of Chancery will not bar her of the Land after her Husband's Death,

Sale by Husband, and Feme receives the Money.

One did convey Land to her Husband in Trust, and he took the Profit, and left it to his Wife, and he mar-

Land conveyed to the Husband in Trust.

ried again; they two were sued in this Court, and yet neither as Executor or Administrator to her first Husband.

Suit by her alone.

The Woman and her Husband agreeing to part upon Difference, and he giving her a Sum of Money for her Livelihood, which was put into a Friend's Hands for her, she was allowed to sue alone for this without her Husband, *Cary's Reports* 87.

Paraphernalia

She was admitted to sue here for a Duty released by her Husband, gone beyond Sea, as in *Farewel's Case*, 32 *Eliz.* and *Baker's Case*, 5 *Car* 1. So for her Jewels, the Earl of *Derby's Case*. And yet she having Goods, she pretending for her *Paraphernalia*, the Husband devis'd them, and it is here allowed to be Good, and she remediless, as in *Davenport's Case*, 5 *Car* 1.

Goods set apart for her.

If a Woman hath Goods at the Marriage, and the Husband doth use and dispose them all his Life-time, and then giveth them away, or maketh an Executor; this Court, it seems, will give her no Relief, albeit the Husband leave never so good an Estate besides, unless they be Goods set apart, and preserved for her Livelihood, by some Agreement, or the like.

Upon a Divorce.

A Woman divorced from her Husband, *causa Frigiditatis*, sued in this Court for her Portion, her Father being alive, and recovered it, *Barrow's Case*. Also the Wife being parted from her Husband, and having an Estate to herself, was allowed by the Court to devise it by her Will, *Mich* 15. *Car* 1.

Devise by her.

Alimony allowed her.

A Decree was made for *Alimony quousque* Habitation, and the Husband after exhibits a Bill, and offers to cohabit, and prays the *Alimony* may cease. 'Twas said, The Court cannot in this Case discharge Arrears, &c. Lord Keeper said, *I shall not continue the Alimony to the Wife, if she will not cohabit; but shall not discharge the Alimony, or Sentence, but keep it in suspense. But the Wife shall return to her Husband, who shall maintain and use her as a Gentleman, and good Husband ought to do; wherein if he fails, I will hear the Wife's Complaint with Favour, and lay on the Decree again, as Cause shall be, but now suspend it, saving to her the Arrears: But she shall immediately return, and if not, she shall have no Benefit of the Alimony till she do so, but take her Remedy in the Court Ecclesiastical*, 1 *Chan. Cases* 250.

Note, Upon the first Decree, the Assurances were made without the Condition, but now held, that absolute Conveyances shall be guided by the Decree, that directed them. *Id.* 251.

And that where a Decree is temporary, and for special Ends, an Original Bill lies to put a Period to it.

Vide 2 Chan. Cas. 101. Where a Conveyance in Trust for the sole Use of the Wife in Coverture was allowed, notwithstanding Elopement sworn in the Husband's Answer; and that the Grant was after Marriage, and voluntary, and that she had a Jointure settled on Marriage.

The Word [*Joynture*] in an Agreement implies, that the Husband shall have an Estate for Life, as well as the Wife: A Joyntress paying of a Mortgage, decreed to hold over till she be fully satisfied, *1 Chan. Cases* 271. *2 Chan. Cases* 172.

A future Interest and Possibility being to the intended Wife for her Preferment, in the Nature of a Jointure, cannot be transferred during her Life, *2 Chan. Cas.* 87. Also when a Term is settled for Maintenance and Jointure, the Husband shall never bind the Wife by Alienation. *1 Chan. Cas.* 266.

Nor can he any way sell or alien her Jointure by a former Husband, unless where she is examined as in a *Fine*, or in this Court: For else no Man would be able to provide a Maintenance for Wife and Children, *1 Chan. Cas.* 308.

A Feme, though not bound by her Agreement during Coverture, yet acting according to the Agreement when a Widow, is bound by it. *1 Chan. Cases* 255.

Where Agreement between Husband and Wife before Marriage, and to be executed during the Coverture, is extinguished by the Marriage; and said, that the Wife may not be suffered, though to good Uses, to dispose of any Money she has raised out of her Husband's Estate by Frugality, *1 Chan. Cases* 117. *Dame Pridgeon's Case*: Yet a Disposition by Feme-Covert of Monies raised out of her separate Maintenance upon an Agreement with Friends after Marriage, was held good. *Id.* 218. *Vide also 1 Chan. Cases* 21. That

Assurances by Decree.

Where a Decree is temporary.

A voluntary Conveyance after Marriage allowed, notwithstanding Elopement, &c.

What in an Agreement is implied by the Word *Joynture*.

A future Interest not transferrable during the Wife's Life.

Jointure by a former Husband.

Feme, how bound by an Agreement during Coverture.

Agreement between Husband and Wife before Marriage, extinguished by Marriage. Dispositions of Money raised for separate Maintenance good.

Benefit of a Decree to the Feme, and not to the Husband's Executors. Where the Wife ought to join in the Suit. If Husband dies before Judgment. Second Husband, how answerable for Wife's Wrong done *dum sola*, &c. Wife's Portion unpaid, goes to the Husband's Executors. A Relation purchased an Annuity for Life of the Plaintiff's Wife, payable to her and her Assigns. Husband declared to be her Assignee, and to receive the Arrears, &c. Husband, as Administrator to his Wife, assigns over his Portion and Goods.

That Agreement, made by Baron with Feme before Marriage, is determined by the Marriage.

That the Benefit of a Decree by Baron and Feme for Money in the Right of the Wife, after the Baron's Death belongs to the Feme, and not to the Executor of the Husband. 1 *Chan. Cases* 27.

Of Things meerly in Action, belonging to the Wife, as a Bond, Legacy, &c. she ought to join in Suit; *aliter* of a Rent running in the Wife's Right after Marriage; and if the Husband alone should sue the Bond, and be nonsuited or dismiss'd, that will not conclude the Case; but if he die before Judgment or Decree, the Wife cannot revive the Suit. 1 *Chan. Cases* 41.

It seems that a second Husband is answerable for Profits of Land wrongfully taken by the Wife *dum sola*, and after by her former Husband during their Coverture, 1 *Chan. Cases* 81.

Where the Wife's Portion in Money remaining unpaid, shall go to the Executors of the Husband, and not to the Wife surviving, who had a Jointure settled on her by her Husband, 8 *Chan. Cases* 189.

The Defendant, by his Brother's Will, was intrusted to purchase 80 *l. per Annum* for the Life of the Plaintiff's Wife, and to pay the same to her and her Assigns: The Husband, who lived separate from her, brought a Bill to enforce the Payment of this Annuity; and it appearing that the Cause of the Plaintiff's first absenting himself from his Wife, was for Fear of Debts, and that he had since solicited her by Letters to cohabit, but she refused, the Court declared, that in this Case the Husband was the Assignee of the Wife, and that there being no negative Word by the Will to exclude the Husband from the Annuity, he could not exclude him, and so decreed the Defendant to pay all the Arrears of the Annuity since the Bill exhibited, and the growing Annuity for the future, to the Plaintiff the Husband. 1 *Chan. Cases* 194.

Upon a Settlement of Lands, Money was to be raised for Daughters Portions, and one of them marries and dies, and her Husband takes out Administration, and assigns all his Interest in the Portion to a Son by a former Wife, this gives the Son a Title to the Money in Equity; for though such an Assignment by one, that

that hath no Colour of Right, but under his Administration, may not be good, yet it is otherwise in this Case, where the Administration is taken only *pro Forma*, and the Husband intituled to the Money, as the Portion of his Wife. 1 *Chan. Cases* 169, 170.

If there be a Portion of 8000 *l.* given to a Woman, provided she marries not without the Consent of *A.* and that if she marries without his Consent, that she shall have but 100 *l. per Annum*: Yet if she marries without his Consent, she shall be relieved; for the *Proviso* is *in terrorem* only, 1 *Chan. Cases* 22, 140.

Yet it was said, that if the said Portion upon such Marriage had been limited over to another, it had been otherways. *Ibid. Sed Vide* 1 *Mod. Rep.* 308. where the said Relief hath been given in many such Cases, though *per Ven.* 352. said, in such Case 'tis generally binding: But see after.

Vide 1 *Mod. Rep.* 306. When there is a *Proviso* in a Devise not to marry without Consent obtained in Writing, and Consent is had, but not in Writing, she shall be relieved.

If by Lease 900 *l.* is secured for a Feme-Sole, in case she marries not contrary to the Liking of *A.* and if she doth, then to such Person as *A.* shall nominate; and for want of such Nomination for *A.* and she marries without the Consent of *A.* yet 'tis said, he cannot dispose of the Lease otherwise, than for her Benefit. 1 *Chan. Cases* 58.

Where a Devise was to *C.* in Tail, if she married with Consent of the major Part of three Persons, if not, &c. then devises the same to *F.* *C.* steals away, and was married without Consent of any of them, and they hearing thereof protest against the Marriage, but afterwards consent to it; yet *C.* shall not be relieved in Equity, for the subsequent Assent cannot divest the Estate, which was before vested in *F.* and said, there should be no Collateral Averment, that it was intended only *in terrorem*, 1 *Chan. Cases* 138, 140. 1 *Mod.* 300, 301. 2 *Ven.* 352.

Where upon a Conveyance in Trust for the Sons, with a Condition to secure 500 *l.* for younger Children, *A.* should secure Childrens Portions, Trustees to convey to him, and *A.* dies before Security.

The Administration was taken only *pro forma*.

Upon a Portion of 8000 *l.* if she marries with Consent, otherwise only 100 *l.*

Aliter, if the Portion had been limited over to another.

Where she marries without Consent in Writing.

Where upon 900 *l.* secured by Lease, if she marries with good Liking of *A.* She marries otherwise.

When upon a Devise, if she married with Consent, *aliter*, if *C.* devise over to *F.* and she married without their Consent, and afterwards they consented, &c.

If the Son of

the

Trust, how
ordered be-
tween Hus-
band and
Wife.

Trust of a
Lease upon
Marriage.

Simile.

Trust of a
Lease dis-
charg'd.

Wife's Tru-
stees and
Husband sell
Land.

Feme-Sole,
single Wo-
man, Widow
or Maid.

the Condition precedent being only in the Nature of a Penalty, and the Father dying before any Security given, the Intent of the Trust shall be regarded, which was to secure 500*l.* to younger Children. 1 *Mod.* 207. *inter Wallis and Crimes, Trin. 19 Car. 2.*

If a Feme-Sole being possessed of a Term, granteth it over, or a Term be granted by another to her own Use, and then she taketh an Husband, and dieth; in this Case the Court ruled it to go to the Executor or Administrator of the Wife, and not to the surviving Husband.

A. being possessed of a Term granted it upon a Marriage to be had between him and *K. S.* to *J. S.* his Brother, to her Use, and after Marriage *A.* dieth, and she marrieth again, and then she died: *J. S.* the Brother took out Administration of her Goods, and then got the Lease, and the second Husband sued him in this Court for the Lease, but the Court would not relieve him. *Coke upon Littleton 351.*

A. being possessed of a Lease for Years, granted it to *B.* and *C.* to the Use of *A.* and his Wife, and afterwards *A.* granted away all his Interest to a Stranger, and the Court would not order it against the Wife, *Dyer 369.*

A. convey'd her Lease for Years to Lessees in Trust, to the Use of her Daughters and Children lineally; *A.* had a Daughter by one Husband, who had Issue, and it died, and the Husband also; then she marries again, then Lessees in Trust convey the Lease to the Mother and her second Son, she discharges the Trust, and gives it to her Husband, and the Heir sued for it. It was ordered, that the Husband, and not the Heir should have it.

A Widow being about to marry, to prevent her Husband's Disposal of the Land, conveys it to Friends in Trust, who with her Husband do sell it for a valuable Consideration, and she sued in Chancery, and the Court decreed, that the Purchaser should reconvey it to her, but should first deduct all his Disbursements.

A single Woman, Widow or Maid, may sue and be sued here, as another Body; of which take some few Cases.

1. A Widow of a Tenant *in Capite* sued here for Dower. her Dower, and had a Commission to set it out, as in *Wild's Case*, 25 *Eliz.*

No Woman shall recover Dower of a Trust by this Court. *Mich. 2 Car. 1.*

When the Woman cannot tell who is Tenant to the Land, she may sue (albeit her Writ of Dower lieth at Law) to discover the Tenant, to know against whom to bring her Action.

A. conveys Lands to *B.* and his Heirs, to the Use of him and his Heirs, in Trust for *C.* and his Heirs, (*B.* a Trust. having then a Wife) *B.* dies, and his Wife sued for Dower of the Land; *C.* sued against her for Relief here, and it was denied; yet the Wife of *C.* should not have had Dower in this Case; for a Woman shall have no Dower of a Trust.

So *A.* delivers *B.* five hundred Pounds to put to Use for him, and *B.* doth buy Land with it, and makes *A.* believe it is for him, and in his Name, but it was in his own Name: *A.* seems satisfied herewith, *B.* dieth, and his Wife sued to be endowed of the Land, and the Court would give no Relief against this Suit. *Trin. 6 Car. 1.*

Of HEIRS, &c.

An Heir also here, in some Cases, shall sue and be sued, farther than the Law bindeth him; as in the Case ensuing.

An Heir of an Estate in Tail having Lands in Fee descended from the Ancestor, in Lieu thereof is bound by Decree to pay the Purchase-Money, or let the Purchaser have the Free-Land. *Pearce's Case. 8 Jac. Tot-hil 184. See before.*

The Mother and Son bought tailed Land of *Hearl*, Ancestor to the Plaintiff, some of the Money due on a Bond, which is lost, the Court thought fit to charge the Mother and the Son, because of the Land in their Possession, *Cary's Reports 25.*

An Heir at Law is to be preferred in a doubtful Case, as 1 *Chan. Cases 7.* Also an Heir at Law is much favoured, if the Words of a Will be ambiguous. 3 *Chan. Cases 131.*

An

Where the Heir became a Purchaser.

An Heir at Law by Marriage-Agreement became a Purchaser in Equity, and not liable to any Debts of his Ancestor. 1 or 3 *Chan. Cases* 255. But see there 262.

Heir must join with Executors to sell and pay Debts.

J. S. seised in Fee, devised Lands to his Executors to sell, and pay Debts, the Heir shall be compelled to join in the Sale; and the Lord Keeper said, it was so ruled in Parliament. *Id.* 262.

Heir reliev'd in Equity against a voluntary Devise.

J. S. seised in Fee by Will in Writing deviseth Land to his Daughter *E.* and her Heirs; and his Mind is, if his Son *A.* pay to her 50 *l.* then his Son should have that Land: The Money was not paid at the Day appointed by the Will; the Daughter sells the Land, and it was decreed against the Vendee, he paying the Money; for he took it in Nature of a Security. *Q. si bene.* 2 *Chan. Cases* 4. And that a voluntary Provision for the Widow binds not the Heir. *Id.* 69.

Not bound by a voluntary Provision for the Widow.

Redemption decreed in Favour of the Heir, where there was a special Conveyance, not like a common Mortgage. *Id.* 59.

Redemption for the Heir. Heir eased out of the Personal Estate.

Not only the Heir, in Case he is charg'd with his Ancestors Debts, but also a Devise of Land shall be unburthened of a Debt lying on the Land, by the personal Estate in the Hands of Executors or Administrators. *Id.* 84.

Heir sells Land in his Father's Life-time.

Where an Heir Apparent sells Lands in his Father's Life-time, and receives the Purchase-money, he shall make good the Sale after his Father's Death. *Id.* 113.

Heir defrauded by excessive Bargain.

Yet a Bargain of an excessive Value gain'd from a young Heir Apparent by Fraud, in his Necessity, set aside. *Id.* 120, 137.

Heir to have the Land after Debts raised.

Where Land is devised to pay Debts, after sufficient is raised for that Purpose, the Heir is intitled to have the Land by a Trust implied, or Trust resulting on Construction, tho' not express'd. *Id.* 223, 115.

Aliter where a Devise in Fee, and no implied Trust for the Heir.

But see 1 *Chan. Cases* 197. where a Devise to an Executor of all Estate Real and Personal for Payment of Debts and Legacies was agreed to be a Devise in Fee, and that there was no implied Trust of the Surplus for the Heir.

Land

Lands were devised to be sold by an Executor, who dies; the Bill is preferred against the Heir for younger Childrens Portions: The Heir demurs, because it is but an Authority in the Executor, which dies with him; but the Demurrer was over ruled. 1 *Chan. Cases* 35. 4 *Leon.* 8. 2 *Ven.* 350. 1 *Lev.* 238.

A Lease is made in Trust to pay Debts, the Lessor dies, the Heir, paying the Debts, shall be relieved against the Lease: So also may a Widow Jointress, 2 *Chan. Cases* 172.

An Heir is not compellable to discover Deeds, where a voluntary Conveyance, without Consideration of Money paid, is set up against him. *Id.* 134.

That [*Heir*] is a Word of Purchase, and an Heir may take by Way of Purchase, but he must be an Heir at the Time of the Devise, or at least, at the Devisor's Death. *Idem* 236.

M. lent 700 *l.* and took a Mortgage of Land called *S.* for 1000 Years, in the Name of her Brother, and afterwards did purchase the Inheritance in the Name of a third Person, and the Lease was assigned to her, she died intestate, and her Mother took Administration: The Question was touching the Benefit of this Lease: Her Sisters claimed to her as Heirs against the Administratrix; a Difference was taken at the Bar, viz. That if *M.* had been first Purchaser of the Fee, and after purchased a Lease, it should wait on the Inheritance, and the Administrator or Executor should have or keep it against the Heir; but here the Lease was first in her ----- Lord Keeper said, *There is no Difference in Reason*, and therefore dismiss'd the Plaintiff as to that Point: And that the Heirs were to have the Lease to attend the Inheritance. 2 *Chan. Cases* 156.

A Lease waiting on the Inheritance, where it is not Affets in Law, is not Affets in Equity. *Id.* 49, 55, 56.

That the Attendance of a Lease upon the Inheritance is a Creature of the Chancery-Court, and whether such Lease may be separated or not. *Vide id.* 56.

Executor dies, his Power to sell Lands for Portions to be supplied by the Heir. So upon a Lease in Trust to pay Debts.

Where an Heir need not discover Deeds. Heir is a Word of Purchase.

Where the Heir shall have a Lease, which is to attend the Inheritance.

A Difference taken, but not allowed.

Where such a Lease is Affets.

Such a Lease is a Creature of the Chancery.

That

That such
Leases, &c.
ought not to
be divided by
an imperfect
Will.

Such a Lease
not a Chattel
in London.

No Relief a-
gainst an Heir
upon a Lease-
Parol.

Lands entail-
ed.

That Leases, Extents and Judgments waiting on to protect the Inheritance, &c. ought not to be divided from the Inheritance by a Will not signed by the Testator, &c. *Id.* 50.

In Debate in a Cause, *Rich contra Rich*, it was agreed by Council, and not denied by the Court, That a Lease for Years waiting on a Citizen's Inheritance, shall not be reckon'd as a Chattel, to be divided among Children by the Custom, *Idem* 160.

No Relief to a Lessee upon a Lease Parol against an Heir, nor upon a Lease which is made by Trustees in Breach of a Trust. 2 *Chan. Cases* 202.

The Father conceiving his Land to be Free-hold gave Part of it to a younger Son; and it fell out that there was an old sleeping Deed of Intail in Being, yet it was ordered, that the younger Son should have it: So a Deed, though not enrolled, has been decreed against the Heir.

The Father sold his intail'd Lands, but had little for them: It seems the Heir, by the Power of this Court, may compel the Purchaser to give the full Worth.

Of EXECUTORS, &c.

Testator's E-
state liable,
into whose
Hands soever
it comes.

Note, The Testator's Estate, into whose Hands soever it comes, is liable in Equity to pay Legacies.

As suppose *A.* devises Legacies, and makes *B.* and *C.* Executors; and *B.* makes *C.* and *D.* Executors and dies, and they possess themselves of the Estate of *A.* they may be both charged in Equity: For though in Point of Law the Executorship survived to *C.* and *D.* is not privy, yet the Estate of *A.* in whose Hands soever, ought to be liable; resolved upon Demurrer, 2 *Chan. Cases* 57.

Leases are
Assets to pay
Debts.

Legatees to
give Bond to
refund.

Leases are Assets to pay Debts, notwithstanding the Assent of the Executor to the Devise of them. 1 *Chan. Cases* 257. *Vide supra* 479.

And it is a Rule of Court, that an Executor shall not be forced to pay Legacies till the Legatees shall give Bond to refund in Proportion, or in the Whole for the Satisfaction of Debts, if any do appear unsatisfied, *Ibid.* & 136, 137.

The Legatee, upon a Bill in this Court, shall re- fund, and this even in Case of Legacies in Specie, as a Horse or 1000*l.* actually paid: And a Legacy being paid remains as a Legacy in the Hands of a Legatee after Payment: And hence it is, that a Legacy is not attachable by Foreign Attachment. *Idem* 257. Legacy to remain after Payment. *Post* 485.

Executors may charge or be charged in Equity farther than the Law doth charge them; wherein, as to Suits or Acts by them, take these Notes ensuing: Suits by Executors, For them.

Here they may sue one another: So one of them may sue an Executor of an Executor, if he hath gotten the Estate into his Hands, or a *Devastavit* be. *Post* 486.

Also if two Executors be, and the one doth disagree, the Act of the other shall bind in Equity, as it doth in Law. Where one disagreeeth.

Where the Agreement of the Husband of an Executrix binds not. *Vide 2 Chan. Cases* 17.

One Executor alone, without the rest, may be sued here; but he shall be charged for no more, than he hath. Suits against Executors.

An Executor shall be bound by a Decree against the Testator: So he must pay Costs adjudged here against the Testator, if he have Assets: But he shall not be charged here for a Trespass done by the Testator, nor may he be compelled here to give Bond to perform the Will, without special Cause be shewed; as that he is decayed in Estate, or hath broken the Trust already in some Particulars, or the like. *Brown's Case*. Decree. Costs. Trespas. Bond to perform a Will.

But he may be here ordered to pay a Debt by Word, before a Debt due by Specialty. Debt by Word before Specialty.

If an Infant Executor assent, it is no good Assent, if there be no other Assets for Debts, which the Common Law provides for the Security of Creditors; much more shall this Court provide for their Security, if an Infant Executor assent, it is no good Assent. Assent of Infant Executor not good.

1 Chan. Cases 257.

By *1 Chan. Cases* 50. an Issue was directed, Whether a Person, to whom another got Administration, was dead or not, and an Injunction to stay Execution; the Bill suggesting, that the Defendant's Husband was dead, and there also appearing some probable Evidence, that he only concealed himself. Issue, whether the Party was dead.

That a Term aliened by an Administrator shall go to an Executor, and not to the Administrator *de Bonis non*, by Administrator.

non. *Id.* 224. *Hill. 25 Car. 2. inter Butler and Bernard.*

Devise the
Residuum to
two Execu-
tors.

A Devise was to two Executors of *Residuum Bonorum*, one of them dies, and his Administrator sues the surviving Executor to have a Moiety of the Surplusage, and 'twas decreed for the Plaintiff, *Id.* 238. *inter Cox and Quantock*; but said to be decreed to the Dissatisfaction of the Bar.

Widow paid
her Hus-
band's Debts,
and allowed
from the Exe-
cutor.

A Widow paying just Debts of the Husband out of his Estate in her Hands, shall have Allowance for the same from the Executor. *Id.* 33. And this was decreed by Consent of Council: But if she had paid any out of Rule, to the Prejudice of the Executor, such were not to be allowed.

Heir paid his
Ancestor's
Debt, and re-
imbursed.

So the Heir being forced to pay the Debt of his Ancestor on Bond, shall be reimbursed by the Executor, as far as there is personal Assets come to the Executor's Hands. *Id.* 74. *inter Armitage and Medcalf.*

Executor de-
livers up the
o'd, and takes
a new Bond.

Where the Delivery up of a Bond by an Executor, and Taking a new Bond to himself for the Debt, is no Conversion in Equity to charge the Executor with the Payment of that Money, though it is at Law. *Id.* 74. And the Executor decreed to assign the Security to the Heir. *Ibid.*

Injunction
not to pay
Debts to a
pretended
Executor.

An Injunction was to Debtors to a Testator's Estate, not to pay any Money to a pretended Executor, till his Title to the Executorship were settled in the Spiritual Court. *Id.* 75. *inter Smallpiece and Anguish.* And upon Examination the Will was found to be forged.

Two Execu-
tors, and one
of them con-
ditional.

The Testator made two Executors, one of them was conditional, that if she married, her Executorship to cease, and the other to be sole Executor: They both exhibited a Bill in Chancery against the Defendant, and an Order was made by Consent, and then she married, and the Condition was broken: Hereupon it was said, that the other Executor must bring a Bill of Revivor, but so as not to revive the Order by Consent for a Reference to determine Matters; for the same being married, her Consent was determined. *1 Chan. Cases 77.*

The Condi-
tion broken,
and Bill of
Revivor by
the other.

The Defendant's Testator gave the Plaintiff 1000 l. to be paid at the Age of 21 Years: The Bill suggested, that the Defendant wasted the Estate, and prayed he might give Security to pay his Legacy when due, and decreed accordingly. *Ibid.* 121.

Idem ibid. An Executor was decreed to pay the Arrears of a Rent or Pension issuing out of Lands, as far as he had Assets of the Testatrix's Estate; though the Person of the Testatrix was not liable, yet forasmuch as the Testatrix held the Land, and did not pay the Rent, it was said, that thereby the personal Estate of the Testatrix was augmented.

Where Lands are appointed to be sold for Payment of Debts, and no Person appointed to sell, the Executor, it's said, shall sell, because the Soul is concerned, which the Executor is to take Care of. *Id.* 178. *inter Pit and Pelham*; but 'tis otherwise in a voluntary Disposition.

The Executor of an Executor, &c. is bound to sell the Lands devised to be sold, when the Executor fails to sell. *Id.* 180. *Tenant & al. versus Brown & al.*

Q. *Hob.* 265. *Edwards versus Groves*. Whether the Heir shall be forced to sell Land devised to be sold after the Death of the Executor, when no Party is named to sell. *Ibid.* in *Margine*.

A Lease renewed by an Executor shall be liable to a Legacy of the Testator's. *Id.* 191. But in Case of an Executorship in Trust, the Renewal of such Lease shall go to the Benefit of the *Cestuy que Trust*.

If an Executor make a *Devastavit*, and die, his Executor is liable to make good the *Quantum* of the *Devastavit* to the Creditors, if he hath Assets from the first Executor. *Id.* 257. *Post* 486.

A. an Executor temporary, and after B. to be Executor: A. proved the Will, and his Executorship ceased; the After-Executor might sue without any other Probate of the Will by him, and the Cause proceeded accordingly to a Decree of an Account. *Id.* 265.

A Legatee of a Term sued for it, but made not the Executor Party, and therefore the Bill was not good, though the Executor to the Legacy was alledged in the

Executor decreed to give Security for a Legacy.

Executor decreed to pay a Rent, which the Person of the Testatrix was not liable to.

Lands to be sold, but none appointed to sell.

Executor of an Executor must sell.

If the Heir must sell when none are appointed.

Lease renewed liable to a Legacy.

Executor of an Executor liable to a *Devastavit*.

Two Executors, and one was temporary, who proved the Will.

Where the Legatee of a Term sued, and Executor no Party, no good.

the Bill to consent, by the Plaintiff, Assignee of the Legacy. *Id.* 277.

A Debtor, Executor to the Testator, decreed to pay to the Devisee of the Residue, &c.

Idem 292. *inter Philips and Philips P.* The Testator made his Will, and made the Defendant Executor, and devised divers Legacies, and the Residue of all his personal Estate to the Plaintiff: The Executor was Debtor to the Testator in 400 *l.* and he left sufficient Personal Estate to pay all his particular Legacies; the Question was, Whether the 400 *l.* being discharged in Law, should be accounted as Part of the Residue, there being no Need of it to pay Debts or Legacies particularly given; and the Lord Chancellor decreed for the Plaintiff the Residue, &c. against the Executor.

Citizen of London Executor, and Residuary Legatee.

Idem 310. Whether the Estate, which a Citizen of London hath, as Executor to another, and Residuary Legatee, be liable in his Executor to the Custom? And it seems it shall: *Inter Civil and Rich, Hill. 30th 31 Car. 2.*

Residuum Bonorum given to divers.

Where *Residuum Bonorum* is given to divers, they must all join; but where Legacies are given to several, each alone may sue for his own Legacy. 2 *Chan. Cases* 124, 478.

Legacies payable at 21, and no Maintenance in the mean Time.

Rennesey against Parrot, 1 Chan. Cases 160. The Plaintiffs were Legatees, and their Legacies to be paid at 21 Years of Age: By their Bill they suggest they had no Maintenance, and their Guardian prays, that the Defendant, who is Executor of the Will, may allow them Maintenance: The Defendant demurred, for that the Plaintiffs were under Age, and their Legacies not to be paid till 21, and then had no Cause of Suit; but the Demurrer was over-ruled.

Bill for Maintenance.

Where there is a Devise over of the Portion, the Court can allow no Maintenance.

1 Chan. Cases 249. The Trustees for Daughters, to whom the Father had devised 500 *l.* a-piece to be paid at 21, or Marriage, with a Devise over, (in Case of Death) prayed Direction, whether they might allow the Daughters Maintenance: The Lord Keeper said, No, because of the Devise over, else it might have been done.

Legacy on Condition she marry with Consent.

Where the Legacy, on Condition the Legatee marry with Consent, is recoverable in Equity, notwithstanding the Breach of the Condition, and where not. *Id.* 20,

140. 1 *Mod.* 308. 2 *Vent.* 352. *Vide ante*: For such *Proviso* was but in *terrorem*; *aliter* if the Portion had been limited to another.

Idem 126. Where Legacies, which were paid by Colour of a Will, which Will was after found to be revoked, were allowed. *Pasch.* 21 *Car.* 2.

Where a Legacy, assigned to one of the Legatees of greater Value than due, shall be brought to an Account; and if upon Examination the Legatee had more, than his Proportion of the whole Value, he was decreed to pay for it. 2 *Chan. Cases* 25. *Pasch.* 32 *Car.* 2.

Where Legacies are given, and the Estate falls short, each Legatee shall proportionably abate. *Id.* 124. *Mich.* 34 *Car.* 2.

And 2 *Chan. Cases* 171. That specifick Legatees ought to contribute proportionably with those in Money, in Case the Estate be insufficient. *Hill.* 1 *Jac.* 2. *Vide ante* 481.

The Executor of an Administrator, pending a Suit in Right of the Intestate to recover Goods, voluntarily pays a Legacy, and afterwards the Goods were evicted from him, and he sues to have back from the Legatee what he had paid, and in Truth was not bound to pay; he is remediless, because he paid the Money without Compulsion of Suit, with his Eyes open, for he knew the Estate was in Question, and was aware of the Danger of the Action. 2 *Chan. Cases* 9. *Simile* 201.

Ibid. If the Suit for a Legacy be in the Ecclesiastical Court, they make the Legatee give Security, because when the Legacy is paid, they cannot restore, &c. But here the Court decrees a Legacy without Security, (unless in Case of Poverty, or the like) for this Court can reach the Legatee again, if there be Cause. *Ante* 481.

In the Case of *Grosvenor* against *Cartwright*, *Hill.* 31, 32 *Car.* 2. the Lord Chancellor said, it was a fixed Rule of the Court, that when an Executor or Administrator receives in Money, which was secured to the Testator, if she lend it out for Profit, she shall not account for the Profit, for she lends the Principal at her Hazard, for that if it miscarry, she shall make it good to the Estate. 2 *Chan. Cases* 21.

Will revoked, but Legacies paid, allowed.

Legatee to account for more received, than his Proportion.

Legatees, when to abate proportionably.

Specifick Legatees to contribute.

Executor prays a Legacy pending a Suit, by which the Goods were evicted, he is remediless.

Security by Legatee in Ecclesiastical Court.

Aliter in Chancery.

Executor lends out Testator's Money to Profit, if he shall account. It seems not.

Adjudged
contra.

But in the Case, *Ratcliff contra Graves*, Mich. 34 Car. 2. *Regis*, 2 Chan. Cases 152. where the Executor liable to Debts and Legacies payable *in futuro* lent out the Testator's Money at Profit, and received the Profit and Interest thereof, and the Debate was, Whether he should answer the Interest he received as Assets?

And that the
Executor
should be
charged.

And the Lord Keeper decreed the Executor should be charged, although several Cases (as well as the aforesaid Case of *Cartwright*, said to be affirmed on Appeal in Parliament) were cited; but the Lord Keeper said, *He remembered the Case of Cartwright but he did not like it*, &c. and so decreed contrary to former Resolutions.

When Exe-
cutors may
prefer their
own Debts:
Estate given
to an Execu-
tor, and none
named.

2 Chan. Cases 54, 55. That Executors in the Payment of Debts may prefer themselves so far as the Personal Estate extends, but not where Lands are devised for Payment of Debts. Trin. 33 Car. 2.

Where a Testator giveth his Personal Estate to his Executor, and nameth no Executor, such Devise is void; and the Money upon a Mortgage, though it be in Fee, shall go to the Administrator. *Idem* 52 Pasch. 33 Car. 2. *inter Winne and Littleton*.

Where Exe-
cutor shall
discover, tho'
the Estate was
to be as he
should volun-
tarily declare.
Executor of
an Executor
liable upon a
Devastavit.

If a Testator wills, that the Quantity of the Residuary Estate should be as his Executor voluntarily, and without Compulsion in Law, should declare; the Chancery notwithstanding may make him discover to any Residuary Legatee. 2 Chan. Cases 198. *inter Gibbons and Dawley*, Trin. 26 Car. 2.

In the Case, *Price against Evans*, 28 Car. 2. the Lord Chancellor said, That although by the Common Law, when an Executor waists the Estate, his Executor should not be liable, because it is a personal Wrong, yet it was otherwise in Chancery, and the Common Law would come to it at last. 2 Chan. Cases 217.

A Child's Le-
gacy paid to
the Father,
allow'd.
But the Exe-
cutor ought
to have sued
here, &c. if
the Legacy
will bear it.

Infant sued the Executor for a Legacy, which the Executor paid to the Father, who failed, yet the Payment at first allowed good, the Legacy not sufficient to bear the Charge of a Suit.

But it was urged by the Attorney General in this Case, if such a Payment to a Father was allowed, it would be of ill Consequence; for the Law must be the same, if it were 1000*l*. And that the Executor should

should have taken Security to repay to the Infant, or sued here to have it paid. To which the Lord Keeper said, it may be so, where a Legacy will bear the Charge of Suit, but not else.

But the Defendant being to prove the Payment of the Money, it appeared the Executor had taken a Bond, which the Solicitor said was to save the Executor harmless; so that he had paid on the Security at his own Peril: Time was desired to produce the Bond, for that it might be to pay to the Infant at his Age. Lord Keeper said, I shall believe the worst, unless you shew the Bond; and therefore decreed the Executor to pay it. *1 Chan. Cases 245.*

The Testator gave 40 *l.* to one to dispose of, as the Testator should appoint by Note, who died without such Appointment, the Defendants being his Executors, and whether the Plaintiff should have the 40 *l.* was the Question.

The Master of the Rolls was of Opinion, the Plaintiff should have the 40 *l.* for that the Testator did not intend it should come to his Executors, but had by his Will given it away from them; and so he decreed the Defendant to pay the 40 *l.* to the Plaintiff. *Pasch. 23 Car. 2. Clerk versus Douch. 1 Chan. Cases 198.*

I would be endless to collect all the Cases, that have been decreed under the before-mentioned Heads, or to run through all the *Titles* and *Divisions* of the Law, whereof the Court of Chancery takes Cognizance in a Way of Equity; *That must be the Subject of another Volume*: And therefore I shall conclude this Chapter, and by Consequence the equitable Power of the Court of Chancery with adding some Directions and Observations concerning

PAUPERS.

Suits are commonly prosecuted in this Court with Charge; but if the Complainant or Defendant is not worth 5 *l.* besides the Matter in Question, the Court will now, either before or after the Suit commenced, admit him to sue or defend without Charge, *in Forma Pauperis*; though sometimes heretofore the

If Executor takes Bond to save him harmless, 'tis at his Peril.

Executor decreed to pay to the Infant.

40 *l.* given to one to dispose of, as Testator should appoint, who died without Appointment.

Nota.

Paupers.

When admitted.

Court hath refused to admit the Plaintiff a *Pauper* after the Suit begun, without some special Cause.

How admitted.

Affidavit.

Petition.

The Way for either Party to obtain such Admission is first to make an Affidavit before a Master, that he is not worth five Pounds, and then to draw a Petition to the Lord Chancellor or Master of the Rolls, praying to be admitted in *Forma Pauperis*, and to have Counsel, a Clerk in Court and a Solicitor assigned him, naming whom in the Petition.

Certificate.

If the Complainant petitions, he must at the Bottom, or in the Margin of his Petition, have a Certificate under Counsel's Hand, signifying that he has good Cause of Suit; except the Bill be already filed, and then 'tis said, he needs no Certificate: Nor does the Defendant need any.

Order for Admission.

This being done, and the Affidavit annexed to the Petition, he presents the same; and if there appear no Cause against it, my Lord Chancellor, or the Master of the Rolls under-writes an Order for the Party's Admission, according to the Prayer of the Petition.

Are to give no Fee or Reward,

After Admittance no Fee, Profit or Reward shall be taken of the *Paupers* by any Counsel or Clerk, &c. named in the Petition, for the Dispatch of his Business, whilst it depends in Court; or he continues a *Pauper*: Nor shall any Contract or Agreement be made for any Recompence or Reward afterwards. And if any Clerk, &c. offend herein, they are to undergo the Displeasure of the Court, and such Punishment as the Court shall think fit to inflict: And if any *Pauper* offend herein, he shall be *dispaupered*, and never again admitted in the same Suit in *Forma Pauperis*, *Ord. Chan.* 152.

But pay for Writing, &c.

But though the Clerks take no Fees, strictly so called, of a *Pauper*, yet they make him pay for the Labour of Writing, which is after the Rate of a Penny per Sheet, and this is said to be allowed by the Court.

Not to sell or contract for the Suit.

If it be made appear to the Court, that any *Pauper* has sold or contracted for the Benefit of his Suit, or any Part thereof while the same depends in Court, such Cause shall be thenceforth totally dismissed, and never again retained. *Ibid.*

The Counsel, Clerk, or Attorney, assigned to assist a *Pauper*, either to prosecute or defend, may not refuse so to do; except he satisfy my Lord or his Honour, (whether ordered the Admission) with some good Reason for such Refusal. *Ibid.*

The Duty of Counsel, &c.

The Counsel, who moves for a *Pauper*, ought to have the Order of Admittance with him, when he moves, and to move for him before he makes any other Motion, *Ibid.* And that hinders not, but he may have another Motion, or as many besides as he might have had without it.

Motions, &c.

If the Register find that any, for whom a Counsel moves as a *Pauper*, was not admitted in *Forma Pauperis*, he shall not draw up the second Motion of such Counsel, but the Fruit of it shall be lost for his Abuse to the Court in the other Motion. *Ord. Chan. 153.*

No Process of Contempt at a *Pauper's* Suit shall be sealed, until signed by his Six Clerk, who is to take Care it be not vexatious or needless, *Ibid.*

Process of Contempt.

And, *note*, all Masters, Councillors, Officers, Ministers, Clerks and Solicitors in the Court, are ordered to observe the foregoing Rules in Favour of *Paupers*, *Ibid.*

'Tis said the Admission must always be produced in the Office, where the *Pauper* has Occasion to pass; but this seems not now so strictly necessary.

As a Party may be admitted in *Forma Pauperis* at any Time during the Suit, so if at any Time 'tis made appear to the Court that he is of such Ability, that he ought not to be in *Forma Pauperis*, the Court will *dispauper* him.

Dispaupered.

And therefore where it was shewed to the Court, That a *Pauper* was in Possession, and received the Rents of the Land in Question, the Court ordered him to be *dispaupered*; though the Defendant had a Verdict at Law, and might thereupon take a Writ of Possession, and so oust him.

It has been complained of as an Abuse, that both Parties, Plaintiffs and Defendants, have been admitted in *Forma Pauperis* in the same Cause; for that it tends much to the Trouble and Disquiet of the Court, and encourages the Parties to be vexatious.

Abuse in admitting both Parties.

C H A P. XVIII.

Of Proceedings in Chancery in the Petty-Bag Office, i. e. according to the Course of the Common Law, and of Persons privileged, and of suing Recognizances, Statute-Staples, &c.

Petty-Bag-Office.

HAVING gone through the Course of Proceedings in this Court in Matters of Equity, of which it has Jurisdiction by its absolute and extraordinary Power, we now come to that Part of the Jurisdiction, which is termed *Limited and Ordinary*, wherein the Course of Proceedings is to be according to the Rules of the Common Law.

In what Cases made use of,

These Proceedings are entred in *Latin*, and filed in the *Petty-Bag-Office*; touching which, *vide ante* p. 25. 26. 419. and may be made use of in all such Cases, as are there mentioned: But the general Use of these Proceedings are in Cases of the Clerks, and Officers, and Attendants of this Court; for such Persons claim a *Privilege*, or *Right*, of being sued only in this Court, and not elsewhere.

Especially in Cases of Privilege.

Privilege respects,

1. The Judges, Assistants, and Officers.

Now the *Privilege* of this Court hath a double Respect: *First*, As it concerns the Persons judging in, or assisting, or ministering to the Court; and in this Sense it is a *Right*, whereby one by his Office, or Usefulness to the Court, is suitable only in this Court: And this Kind of Privilege belongs to the Lord Chancellor, Lord Keeper, Master of the Rolls, and to all the Masters, Ministers, Officers, and known Clerks of the Court, and to their necessary Menial Servants and Attendants: And these may, as the Case requires, be impleaded here, either as at the Common Law in the *Petty-Bag-Office*, or in a Way of Equity, by *English Bill*. *Vide Ord. Chan. 6.*

2. The Witnesses and Suitors.

Secondly, The Privileges of this Court regards the Suitors and Witnesses here; and this consists in a Right of

of being exempted and freed from Arrests by Process from other Courts for some short Time, and in certain Cases; for if they be interrupted in their necessary Attendance, they may have a *Superfedeas* of Privilege for their Enlargement, and Stay of the Suit. But this is merely temporary, and therefore a *Procedendo* may be had as soon as the Reason of this Privilege ceases. *Vide p. 496.*

Arrests.

Superfedeas
of Privilege.

But if any, intituled to the first Kind of Privilege, be arrested in a Civil Plea by the Process of any Court, he may have a Writ of Privilege, containing an absolute *Superfedeas*, and requiring the Plaintiff, *quod sequatur in Curia, ubi, &c. si voluerit.* And note, Clerks of the Court must have a Certificate from the Master of the Rolls, or Office, where they write, before a Writ of Privilege will be granted to them, *Ord. Chan. 6.*

Writ of Privilege,
For Clerks,
&c.

A Certificate.

Also Menial Servants of a Master, Minister, or Officer of the Court, must first make Affidavit, that they are so; and the Writ for such must first be presented unto, and signed by the Lord Chancellor; and the Affidavit must at the same Time be annexed to it: And such Writ shall continue in Force no longer, than he continues such a Menial Servant, *Ib. 7.*

For Servants
an Affidavit.

And note, privileged Persons have their Writs sealed without Fee, *Ord. Chan. 100.* Nor are they to be sued elsewhere, than in this Court, and that either by Latin Plea in the Petty-Bag Office, or by English Bill, as the Nature of the Case requires, except in Cases where the King is concerned, who may chuse to sue in what Court he pleases.

Writs sealed
without Fee.

The Method of suing such privileged Person in the Petty-Bag-Office, is thus, *viz.* First, you must deliver a Declaration in Debt (or any other personal Action, as the Case is) to one of the Six Clerks, whom the Plaintiff makes his Attorney in the Cause, who thereupon giveth a Day (as it is commonly termed) which is a Week, *viz.* the whole next Return, to the Defendant to answer, which Day is entred in the Six Clerks Costs-Book, and also in the Petty Bag Office in this Manner: *Stone versus Long, Cleric, Dies datus a Die Sti. Mich in unum mensem placit' Debiti & Privileg'.*

Method of
suing in the
Petty-Bag.

Declaration.
Dies datus.

Day

Of Proceedings in Chancery.

Forejudger.

Day being thus given, the Declaration under the said Attorney's Hand is sent over to the *Petty-Bag* by one of the Attorney's Clerks in the Six Clerks Office; which Declaration is briefly entred by one of the Clerks in the *Petty-Bag-Office*, and likewise the Day, that is given the Defendant to answer, on a Roll there, which is called *Rotulus Rememoracionis parva Baga*; at which Day, by the Course of the Common Law, if the Defendant plead not, he is forejudged the Court. But of late the Course has been to allow the Defendant a Day of Impar lance, *i. e.* Day till the next Return after the Return already given him to answer, which is done in this Manner:

Defendant's Impar lance.

The Defendant (appearing) retaineth one or other of the Six Clerks, who *imparleth* for him, which is done by entring the same in the Six Clerks Costs-Book thus: *Stone versus Long. Li. Lo. (i. e. Licentia Loquendi) dat' est, in Crastino omnium Animarum*; at which Day it is sent over into the *Petty-Bag*, to be entred in the aforesaid Roll, next under the Declaration.

Peremptory Day.

The said Day of Impar lance being past, another Day, *viz.* commonly five Days in a Week, is given by the Plaintiff's Attorney, and entred in the *Petty-Bag*, as aforesaid, for the Defendant to plead, or else Judgment to be entred against him; and this Day is commonly called, *The Peremptory Day*.

Defendant's Plea.

If the Defendant pleads, his Plea is delivered by his Attorney to the Plaintiff's Attorney; and then if the Plaintiff will proceed to Tryal, he is to joyn and make up the Issue, (if he may, for in some Cases he cannot) or else the Plaintiff is to reply, and give the Defendant a Day, *viz.* a whole Term to joyn up Issue; which Day is given and entred as the Day of Answer; and if the Defendant by that Day joyns not up the Issue, Judgment is entred by *Nihil dicit*.

Issue joined, &c.

No Oyer after peremptory Day.

On Issue tryed Judgment and Execution in B. R.

Note, That after a Peremptory Day given, the Defendant cannot pray *Oyer* of the Bond and Condition, or such like, as was sometimes used for meer Delay: But if the Issue be joyned, and the Record made up either by the Plaintiff or Defendant, it is sent into the *King's-Bench* (or *Common-Pleas*) to be tried as Action at Issue in that Court, and upon Judgment there; Execu-

Execution is thereupon awarded in that Court. *Vide infra.*

But if the Defendant neglect, or refuse to imparl at the Day given him to answer, or plead, (for he may plead, if he will, at that Day) then Judgment is entered against him, and Execution thereupon awarded here.

But on Default, or *Nihil dicit* here.

Upon Judgment, either by Default, or *Nihil dicit*, some of these Writs of Execution are here awarded, viz. if the Action be for Debt, the Plaintiff may have an *Elegit*, by *West. 2, cap. 18.* or a *Levari fac'*; and if the Plaintiff cannot levy his Debt and Damages, then he shall have a *Cap. ad Satisfac'* either for all, or so much, as resteth unsatisfied.

Writs of Execution.

The Judgment being satisfied, the Plaintiff by himself, or his Attorney, (if the Defendant desire it) doth acknowledge Satisfaction upon the Judgment in the *Petty-Bag-Office*.

Satisfaction acknowledged.

And it is to be noted, That whatever Day is given, or other Thing done in the Six Clerks Office, and by them entered in their Books, is of no Effect, except the same be entered in the *Petty-Bag-Office* also.

Entries how to be made.

This is the Course, where a privileged Person is Defendant: But if such a one be Plaintiff, you must observe this Method, viz.

Privileged Person Plaintiff.

The Defendant being arrested by an Attachment of Privilege, at the Suit of a privileged Person, must retain one of the Six Clerks for his Attorney, as aforesaid, and must put in Bail according to the Course of the Court; which is to appear in Court from Day to Day, until the Cause be determined, and to satisfy the Plaintiff all such Sums, as he shall recover against the Defendant by Reason of this Suit.

Defendant to put in Bail, &c.

Bail being thus put in, the Plaintiff (being privileged) puts in his Declaration, *ut supra*, and thereupon the Proceedings are the very same as those before directed, where the Suit is against a privileged Person.

What Bail.

And, *note*, by the Course of the Court, the Defendant, where the Plaintiff is privileged, is to put in four subsidy Men, or sufficient Sureties, be the Action never so small, as was done in *Archibald's Case*, 23 *Elizabeth*. where the Action being 400 *l.* the Defendant himself

self was bound in the said Sum, and each of the four Sureties in 100 l.

Judgment for
a privileged
Man, and Ex-
ecution.

If Judgment be given for a privileged Person in this Court, he may, if he will, take out Execution, as before is shewn; but if he will not, he may then take out a *Scire Facias* against the Defendant and his Manu captors upon the Bail. Whereupon, if Judgment be upon the said *Scire Facias* in the Chancery, then is Execution there awarded; but if it be upon an Issue joyned, and sent into the *King's-Bench*, &c. and upon a Trial there, then is Execution there awarded; and upon Satisfaction of the Debt and Damages, the Bail is to be discharged upon the Acknowledgment of Satisfaction, as before is shewn in Proceedings against him.

Demurrer ar-
gued.

If either the Plaintiff, or Defendant, upon a Declaration of Privilege, or *Scire Facias*, Demur in Chancery, the Demurrer being joyned, a Day is set down by the Lord Chancellor for the arguing of it before him:

Judgment.

Execution.

*Nil cap. per
Billam.*

And if on the Argument, it fall out to be a *Respondeas ouster*, then Judgment is entred thereupon; and if it be against the Defendant, Execution is awarded; and if it be against the Plaintiff, then it is entred *Nil capiat per Billam*.

*Respondeas
Ouster.*

But if it be a *Respondeas ultra*, then is the Defendant to pay Costs, and a Day is given him to plead peremptorily, or Judgment to be entred.

Judgment on
a *Superfedeas*,
*quia impro-
vide*, &c.

A Clerk of this Court was sued to the *Exigent* in the *Common Pleas*, then issues a *Superfedeas* to the Sheriff, *quia improvide emanavit*, and then he brings a Writ of Privilege directed to the Justices of the *Common-Pleas*, requiring them to surcease, and upon a long Debate his Privilege was disallowed, and he driven to answer: For the Court was lawfully possess'd of the Plea, inasmuch as he had by the *Superfedeas* affirmed the Jurisdiction of the Court; for the *Superfedeas quia improvide*, &c. always recites the Defendant appearing in Court by his Attorney, and shews his Name, so that this is meerly his own Fault; but if he had not sued out the *Superfedeas*, the Court, notwithstanding the *Exigent*, would upon bringing his Writ of Privilege to them, have allowed it, and granted a special *Superfedeas* of the Outlawry to the Sheriff, *Dyer* 33.

Jurisdiction
admitted.

So where a privileged Person appears and imparls, he admits the Jurisdiction of the Court, and can never after disaffirm the same. By Imparlance.

If a necessary Officer, such as whose Attendance the Court cannot be without, viz. a Register, Master in Chancery, or such like, be in Prison upon Mesne Process, the Lord Chancellor may enlarge him; but if he be in Execution for Debt or Damages, he shall have no Privilege; for the Plaintiff would be without Remedy, if the Party were once set at Liberty: But this is to be understood with some Limitation; for where by the Order of this Court one was discharg'd *Superfedeas*, and the Plaintiff brought an Action of Escape against the Sheriff, this Court ordered him to discharge the Action, and stay'd all Proceedings against the Sheriff. Persons privileged under Arrest, if by Mesne Process.
Not so, if in Execution.

The Plaintiff and Defendant having joyned in Commission to examine Witnesses, the Defendant, two Days before the Execution of the Commission, causes the Plaintiff to be taken in Execution for the same Cause depending here: The Court ordered a *Superfedeas*, the Defendant to pay Costs, and Damages to be taxed, to discharge the Plaintiff from the Execution at the Defendant's Costs, the Plaintiff giving a new Judgment; and also to be at the Charge of a new Commission, and ordered an Injunction till Hearing. *Vide 2 Chan. Reports 22, 1 Chan. Rep. 218.* Exception.
Costs and Damages.

Such as have Privileges of this Court, have sometimes a *Superfedeas* of Privilege granted to them as a Protection; the most extensive of which Sort, that I find, contains both an *Injunction* and a *Superfedeas*, and is directed, *To all and singular Judges, Sheriffs, &c.* injoyning them not to molest, or vex a Clerk of one of the Six Clerks of this Court in his Privileges, nor to force him to appear, or answer before any Judge, &c. save of this Court, upon any Complaints, Pleas, Trespasses or Demands, which concern not the King's Person, (Pleas of Freehold, Felonies and Appeals only excepted) nor to impanel him on Juries, nor to put, or chuse him into any Office of Collector, Churchwarden, or other common troublesome Office; and if any Distress has been made upon him upon that Account, without Delay to release and discharge it. Superfedeas of Privilege.
Injunction.

In

To whom to
be granted, or
denied.

In King *Richard* the Third's Time a Suitor of this Court petitioned for such a Writ, but the Six Clerks certified they could not find any ancient Precedent for a Writ of Privilege, by Way of Protection, for such as have Suits depending here, but only for Officers and Ministers of the Court, or such, as are brought up by Process to appear and testify: The Effect of which Certificate was, That according to Custom, &c. all Men, their Domesticks and Servants coming by the King's special Command to his Presence, or Courts, and there staying and returning Home, are under his special Protection and Defence, and ought not to be arrested, or imprisoned by Reason of any Debt, Account, Trespass, or Contract; and that shewing the Cause of their Attendance and Commands, that the Person or Persons be not arrested, or imprisoned during such Attendance.

Superfedeas, or
Hab. Corpus.

But if any, that is privileged by this Court, be arrested, he may have a *Superfedeas* of Privilege for his Enlargement, or an *Habeas Corpus*.

For Plaintiffs,

A Plaintiff coming up to this Court, Half a Year after his Bill was exhibited, was arrested in *London*, and had his Privilege allowed him, it appearing that he came up only for the following of his Suit. Also a Plaintiff arrested here, when he came up to examine his Witnesses, was discharged by *Superfedeas* of Privilege. And in another Case, a Defendant coming to execute a Commission, being arrested, had a *Habeas Corpus cum Causa*, and was set at Liberty by this Court.

Or Defen-
dants.

Lord Keeper's
Servant dis-
allowed:

Where a Defendant got a Writ of Privilege, as Servant to the Lord Keeper, and removed two Suits against him in *London*, the Lord Keeper declared in open Court, That the Defendant is not now his Servant, and therefore ordered the said Causes to be remanded, and that the Defendant be not allowed the Privilege of this Court, *Cary's Rep.* 146.

Clerk of the
Hamper sued
in the Exche-
quer.

Note, It was held in the *Exchequer*, That if the Clerk of the Hamper be sued by Bill in the *Exchequer*, by the King's Assignee, and he, upon a *Superfedeas* brought by him, insists upon his Privilege, as an Officer of this Court, it shall not be allowed him; for every Accountant ought to be present, and At-
tendant

tendant in the Court of *Exchequer*; and 'tis for the King's Advantage, and convenient for himself, that he be sued there where he is to attend.

The Lord Chancellor *Egerton* often declared, That no Chequer-Man is privileged against a *Subpœna* of this Court; and several Pleas of Officers there, as Register, Receiver, &c. have been over-ruled. *Exchequer Privilege disallowed.*

A Defendant here refuses to answer, because he was an Inhabitant of the County-Palatine of *Lancaster*, but was over-ruled: The Plaintiffs in this Case being Servants and Ministers of this Court, and as such intitled to Privilege here. *County-Palatine Jurisdiction.*

Note, If one that is not privileged, be joyned a Defendant with one, that is, neither shall have Privilege, *Cary's Rep. 96.* And it seems in the Case of Joint-Plaintiffs, where the one has Privilege, and the other not, this Rule is much stronger. *Joint-Defendants or Plaintiffs.*

If an Officer of this Court and his Wife be sued in another Court of Law, &c. they shall not have Privilege; for her Attendance is not necessary in this Court, nor is she impleadable here in the *Petty-Bag*: And besides, where the Common Law, and a private Custom or Privilege encounter one another, the Common Law shall have the Preference; and therefore it is, that where an Action is brought against two, one of them only being entitled to Privilege, his Privilege shall not be allowed him. *An Officer and his Wife Defendants.*

Where two Persons were sued here, one of them dying, the Survivor pleaded his Privilege of the *Exchequer*: The Plea was over-ruled, because, for ought appeared, the deceased had no Privilege there; and so this Court (waving the Consideration, whether the *Exchequer-Men* ought to have Privilege here or no) was at first lawfully possess'd of the Cause, 1 *Chan. Rep. 70.* *Exchequer Privilege.*

If an Officer refuses to allow, or disobey a Writ of Privilege, or requires Bail before he will discharge the Parties, it is a Contempt, for which many have been committed. *Contempt in disobeying a Writ, &c.*

If a privileged Person of this Court do untruly surmise, That one impleaded in another Court is his Servant, and thereupon procure him a Writ of Privilege to supersede the Action, whereby the Plaintiff is delayed, *Action for procuring Privilege where not due.*

layed, an Action of the Case will be against such Officer, wherein he ought not to have Privilege.

A *Capias ad Satisfaciendum* lies not in a Suit by Attachment of Privilege; for no *Capias ad Satisfaciendum* lies, but where Process of Outlawry lies upon the first *Capias*; and here the first Process is not a *Capias*, nor does Process of Outlawry lie upon it.

Note, All Proceedings in the *Petty Bag Office* by, or against any Minister, &c. of this Court, for any Matter or Thing determinable at Common Law, are to be pleaded to Issue as at Common Law, and the Record thereof to be delivered *per Manus Cancellarii* into the Court of *King's Bench*, or *Common Pleas*, at the Plaintiff's Election; and after Trial and Verdict there had, the Record shall be remanded into this Court, and Judgment shall be given here. *Vide 4 Inst. 80.*

All Peers, and other Members of Parliament, have Privilege, during Parliament, for themselves, their Menial, and other necessary Servants and Goods, so as not to be arrested, &c. except for Treason, Felony, or Breach of the Peace.

Some Time ago, their Privileges were stretched so far, and with such Uncertainty, that it was thought necessary, in some Measure, to ascertain and restrain them by divers Acts of Parliament, *viz.*

Stat. 12 W. 3.

First, by the Act 12 W. 3. which gives Liberty to any Person, To exhibit a Bill against any Peer of the Realm, or any Knight, Citizen, or Burgess of the House of Commons, for the Time being, or any of their Menial, or other Servants, or any other Person entitled to the Privilege of Parliament, in the High Court of Chancery, &c. at any Time, from, and immediately after the Dissolution, or Prorogation of any Parliament, until a New Parliament be recalled; and from and after any Adjournment of both Houses, for above the Space of Fourteen Days, until both Houses shall meet and reassemble; and the Party may proceed therein by Letter, or Subpoena, leaving a Copy of the Bill with the Defendant, or at his House, or Lodging, or last Place of Abode: And for Want of Appearance, or Answer, or for Non-performance of any Order, or Decree, or Breach thereof, may sequester the Real and Personal Estate of the Party, as is used and practised where the Defendant is a Peer of the Realm, but shall not arrest, or

Vide post 501.

Trial and Judgment.

Privilege of Parliament.

imprison the Body of any Knight, or Burgess, or other privileged Person, during the Continuance of the Privilege of Parliament.

And by another Clause in the same Act, Privilege of Parliament is taken away from the King's original and immediate Debtor, &c. in any Sum, &c. for any Branch of his Revenues, or other original or immediate Debt or Duty to the King. The King's Debtor, &c.

And by an Act, 2 Anne cap. 18. Privilege of Parliament is also taken away from all employed, or entrusted in the King's Revenues, or any other Office, or Place of publick Trust, in any Action, or Suit for any Forfeiture, Misdemeanor, or Breach of Trust of, in, or relating to such Office, &c. or any Penalty imposed to enforce the due Execution thereof. Stat. 2 Anne cap. 18.

But, note, both in this Statute and the former, the Bodies, or Persons of Lords of Parliament, are preserved from Arrests, &c. and so are the Bodies or Persons of Knights, Citizens, and Burgesses of the House of Commons; and if any Breach be made in their Privileges, the respective Houses of Parliament will, upon Complaint, call the Parties concerned therein before them; and if it be proved, commit them for a Breach of Privilege of the House.

Breach of Privilege.

If therefore during the Time of the Privilege, you want to proceed immediately against a privileged Person, you must either get him to agree to wave his Privilege, which in most Cases (if he be a Man of Honour, &c.) he will not refuse; or you may petition the House where he sits, that he may do so, and then he seldom refuses it; or if he does, the House, if it see Cause, will order him to wave his Privilege. Waver of Privilege.

Note, If the Waiver of Privilege be of his own Generosity, or a voluntary Act, it is necessary that you have it made under his, or his Solicitor's Hand for your Indemnity; for parol Waver in such Case will not be sufficient.

'Tis said, If a Trustee be made a Defendant here, he shall not have Privilege, though he be a Member of Parliament. *Quare.*

Of entering into a Recognizance, &c.

Other Mat-
ters in the
Petty-Bag-
Office.

Note, Besides the Matters before-mentioned, there are divers other Things transacted in the *Petty-Bag-Office*, as suing Recognizances taken in this Court, Proceedings upon Statute-Staples, &c. Concerning which, you may observe the following Directions, viz.

Of Entering into, and Suing a Recognizance
in this Court.

If any Man would take Security for a Debt, or any other Thing, by Way of *Recognizance*, the Way to enter into it is, first draw up your *Recognizance* according to the ensuing Form.

Form of a
Recogni-
zance.

R. B. de G. in Parochia de R. in Comitatu S. Yeo-
man, coram Domino Rege in Cancellarij sua perso-
naliter constitutus Recognit se debere N. M. Civi & S.
London centum librarum bonae & legalis Monetae Magistri Briti
solvendae eidem N. M. aut suo certo Attornij Executori
Administratori vel Assignato suis, in festo Sancti Johannis
Baptistae (or what Time is for the Payment of the
Money agreed upon) post datum hujus Recognitionis; &
nisi ita fecerit; vult & concedit pro se, Heredi Execu-
tori & Administrato suis, quod dicta Summa centum libr-
levetur & recuperetur de Maneriis, Messuagiis, Terris,
Tenementis, Bonis, Catallis & Hereditamentis ipsius R. B.
Heredi Executori vel Administratori suorum, ubicumque
fuerint inventi per presentes, ad solum usum praesentis
N. M. Executori vel Administrato sui. Teste dicto
Domino Rege apud Westminst- 21 die Septembris. Anno
Regni Domini nostri Georgii, Magnae Britanniae, &c. Regis,
fidei Defensoris, &c. primo Annoque Domini 1714.

How entred
into.

The Recognizance being thus drawn, the Party, who is to enter into the same, must go before one of the Masters in Chancery, and there acknowledge it, and the Master will sign it; for which you must pay Two Shillings: Then carry your Recognizance to a Clerk in the Inrolment-Office, and there you shall have it inrolled; but you need not inrol it, unless you please, but within Twelve Months after the Acknowledgment.

Bu

But if you would sue out a *Recognizance* that is taken here, then follow these Directions, viz.

You are first to bring a Copy of the *Recognizance* to one of the Clerks of the *Petty-Bag*, and thereupon (if you will) he will make you out two Writs of *Scire Facias*; one of a Return past, and the other of a Return to come. These Writs you must deliver to the Sheriff of *Middlesex*, who will return them, as in this Case the Law injoyneth him to do. How sued.

And when you have your Writs returned, you are to carry them again to the *Petty-Bag*, and retain one of the Clerks there to be your Attorney herein.

And then give the Defendant a Day to appear, which if he do not accordingly, a Judgment is to be awarded against him for his said Default: And if the Defendant do appear by the Day to him so given, then is the Plaintiff to declare against him by his said Attorney, and he the Defendant is to answer and plead to the Plaintiff here, as is usual in the Courts of Common Law. And when you are at full Issue, you are at the furthest of your Proceeding in Chancery; for then if you proceed to Trial, you must have the whole Proceeding in this Office written into Parchment; and it must either be sent by the Officer of the *Petty-Bag* sealed up, to be tried in the *King's Bench*, or *Common-Pleas* (which you will) or else it may be delivered over sealed by the Lord Keeper, or Lord Chancellor, which is agreeable with the Words *se propria manu*, &c. for there can be no Trial by Jury in Chancery.

Of Statute Staples.

The Way of Proceeding in this Case is, to go first to the Clerk of the Staple, and shew him the Date of your Statute-Staple, when it was acknowledged, which will appear by the Statute itself. How sued, &c.

And then the Clerk of the Staple will make your Certificate thereupon, and seal it up; the which carry to the Clerk of the Crown, and give it him to make the Exigent therein.

Of Statute Staple, &c.

And then deliver your Certificate to the Clerk of the Crown, and have then your Obligation made, and your Extent is to be made and indorsed on the Back-side

This Indorsement of the Extent is called the *Fine of the Extent*, which must be delivered unto the Sheriff, who will impanel a Jury to inquire, and extend and apprehend as well the Body as the Lands, Goods and Chattels of the Party so bound.

And when the Sheriff hath extended them into the King's Hands, he will keep them until you bring him a *Deliberate*, which you may have in the Office of the *Petty-Bag*.

But before you sue out the *Deliberate*, be sure to inform your self, whether there be Estate, or Goods extended sufficient to satisfy your Statute: For after you have taken your *Deliberate*, you shall never have more than what was first extended and delivered.

Therefore if you can find any more Lands, or Goods extendible, in any other Place than you have at first extended, you may get them extended likewise, until you have sufficient to satisfy your Debt; and when you have sufficient, then deliver up your Statute unto the Clerk of the *Petty-Bag*, who will thereupon make your said Writ of *Deliberate*, and not before.

INSTRUCTIONS

FOR

Drawing Bills of Revivor.

IT having been observ'd as a Defect in the foregoing Bills of Revivor, Treatise, that no Directions are therein given for drawing Bills of Revivor, the Author has thought fit in this Second Edition, to supply that Defect by the following *Addenda*, viz.

Bills of Revivor are necessary in such Cases, where the Suit happens to be discontinued, which generally it is by Reason of the Death either of the Plaintiff or Defendant, before the Decree enroll'd. When necessary.

If the Plaintiff dye pending the Suit, then his Heir, Executor, or Administrator, must revive it by such a Bill, reciting the former Proceedings in this Manner, viz. On Plaintiff's Death,

After the Direction of your Bill, say, *Humbly complaining, sheweth, &c. Your Orator, A. B. of C. Heir, (or Executor, &c.) of T. D. late of C. in the County of, &c. That whereas the said T. D. did, on, or about the Day of in the Year of our Lord, exhibit his Bill of Complaint into this high and honourable Court, against P. L. of in the County of &c. Thereby setting forth, That, &c. and so recite the Original Bill, and all the Proceedings thereon.* Beginning.

And if you revive on the Defendant's Death, say, *That whereas your Orator did heretofore, that is to say, on or about the Day of in the Year of our Lord* On Defendant's Death.

Exhibit his Bill of Complaint into this high and honourable Court, against such and such Defendants, thereby setting forth, That, &c. And so set out all the former Bill, till

And that your said Orator might be relieved

Instructions for Drawing

relieved in the Premises, your Orator prayed the Aid and Assistance of this honourable Court; and that for that Purpose Process of Subpoena might be awarded against the said Defendants, to appear in this honourable Court, and answer the said Bill; which Process being granted, and the Defendants therewith served, they appeared accordingly, and answered the said Bill, to which Answer your Orator replied, and the Defendants rejoined, and both Parties joined in suing out a Commission, and a joint Commission issued for the Examination of Witnesses, by Virtue whereof divers Witnesses were examined on both Sides, and their Depositions duly taken, return'd and publish'd according to the usual Rules and Practice of this Court, as by the said Bill, Answer, Replication, &c. now remaining in this Court may appear. And the Cause so standing in this Court upon the said Proceedings, as aforesaid, the Day of now last past, was by the Order of this honourable Court appointed for the Hearing thereof, on which Day the same coming on to be heard accordingly, in the Presence of Council Learned on both Sides, the Substance of the said Bill appeared to be as above is recited, whereto it was insisted by the Defendant's Council, That, &c. (And so set out some of the Councils Allegations, &c.) Whereupon, and upon Debate of the Matter, and hearing of what could be alledged on either Side, your Lordship did then think fit and order, That, &c. And so set out the ordering Part, and all Proceedings thereupon, &c. And when all are recited, say, As by the said Order, &c. may appear. (And then add) But now so it is, say it please your Lordship, That before any further Proceedings were had in the said Cause, A. D. one of the Defendants in the said Cause dyed, whereby the said Suit and Proceedings thereupon became abated. And the said A. D. having in his Life-time made his Will, and one P. L. of Executor thereof, who since the said A. D.'s Death hath proved the said Will, and taken upon himself the Burthen of the Execution thereof, and possess'd himself of the said A. D.'s Personal Estate, sufficient to satisfy your Orator's said Demands, &c. And forasmuch as by the Death of the said A. D. the said Suit and Proceedings are become abated, as aforesaid. And to the End the same Suit, and all Orders and

Note.

and Proceedings therein so abated, may stand and be revived against the said P. L. and the surviving Defendants, (naming them) and be put into the same Plight, State, and Condition, as the same were in at the Time they so became abated. May it please your Lordship, the Premises considered to grant unto the Orator his Majesty's most gracious Writ of Subpœna ad revivendum, issuing out of this honourable Court, and under the Seal of the same Court, to be directed to the said P. L. &c. therein and thereby requiring them personally to be, and appear before your Lordship in this honourable Court, then and there to shew Cause if they can, why the said Suit, Orders, and Proceedings so abated, as aforesaid, should not stand and be revived, and put in the same Plight and Condition, as the same were in at the Time of the Abatement thereof, and answer all and singular the Premises aforesaid. And also stand to, and abide such further Order and Decree therein, as to your Lordship shall seem meet, &c.

Conclusion.

And your Orator shall ever pray, &c.

Which Conclusion, *mutatis mutandis*, may also serve where the Suit is abated by the Plaintiffs Death, and the Bill of Revivor brought by his Heir or Executor, &c. as aforesaid.

And Note, in *Wraynham's Case*, 'twas said by *Yelverton*, Attorney-General, where the Matter of the Bill is absolute, and constant, (or certain) there the Decree must be reversed by Bill of Revivor; *aliter*, where it depends on subsequent Acts, and is qualify'd or Conditional, there it may be reversed without any Bill of Revivor.

Decree reversed by Bill of Revivor, &c.

See more of Bills of Revivor, Tit. Bills in the Table.

OF THE
CONTROVERSY
BETWEEN

My Lord *Coke* and Chancellor *Egerton*,

AND

The CENSURE, &c. of my Lord *Coke*
thereupon.

HAVING in the Beginning of this Treatise, viz Page 5. mentioned a Controversy inter the Lords *Coke* and *Egerton*, touching the Jurisdiction of the Court of Chancery, &c. and referring the Reader hither for a more particular Account thereof, I am obliged to let him know, that he may find most of the Occurrences touching that Controversy at the End of the Reports in Chancery, in 8vo. Vol. I. 1715.

But the Publisher thereof having omitted to shew what the Event of that Controversy was, with Respect to my Lord *Coke*; I must here beg Leave to supply the same: And by the way, it must be admitted, that the King himself may not limit or determine the Power or Jurisdiction of the Courts of Law; and that the Attempt of King *James I.* in that Particular, was *Opus Arbitrii sui, & absque Fundamine Legis*. But as *Egerton* was in great Favour with the King, so by his Means his Master's Wrath was made like the Roaring of a Lion against *Coke*, and therefore other Crimes were found out and charged on the Chief Justice, in Order to displace him: Which being drawn up in Three Articles, and referred to the Privy Council, to examine; the Lords of the Council made their Report thereof to the King as follows, viz.

“ May

" May it please your most excellent Majesty,

" The Lord Chief Justice presenting himself on his
 " Knees at the Board, Mr. Solicitor signified, That by
 " your Majesty's Command he was to charge him
 " with certain Acts and Speeches, wherein your Maje-
 " sty was much unsatisfied. which were in Number
 " Three, viz. 1. An Act done, 2dly, Speeches of high
 " Contempt uttered in the Seat of Justice. 3dly, Un-
 " comly and undutiful Carriage in the Presence of
 " your Majesty, your Privy-Council and your Judges.

" That as to the first, It was done when he was
 " in a Place of Trust, i. e. Attorney-General, when
 " he concealed a Statute of 2000 l. taken of Sir Chri-
 " stopher Hatton, to the Use of Sir Edward Coke, not to
 " pay a Debt of good Value due to your Majesty,
 " nor to accept of a Discharge for the same. And for
 " the better Strengthening of it, there was likewise a
 " a Bond taken of 6000 l. with Sureties, to the same
 " Effect; for that Sir Christopher Hatton lay charged
 " under the Penalty of 1800 l. not to pay the Debt, nor
 " to agree to any Surrender, Release, or Discharge
 " thereof.

" The second Point were Words spoken in the King's-
 " Bench the last Day of Hillary Term last, in the Case of
 " Glanvill and Allen, whereof the Solicitor made a
 " Narrative Relation, and charged the Lord Chief
 " Justice of giving Judgment there, with too much
 " Haste (Heat) and Encouragement; and that he had
 " therein too constantly directed the Jury, turning them
 " thrice from the Bar, and said, *That if they set their*
 " *Hands to a Bill after Judgment, he would foreclose*
 " *them the Court.* And in another Case the same Day
 " said, *That the Common Law of England would be*
 " *overthrown by Chancery, and that the Light of the Law*
 " *would be obscured.* All which was confirmed by good
 " Witnesses.

" The third and last Point was his undecent Behavi-
 " our before your Majesty, your Council and your
 " Judges:

The Controversy between Lord Coke

“ Judges: And that consisted of two Points. *First*,
 “ The Exception he took at your learned Council in
 “ your Presence, for speaking at your Command.
 “ The *second*, That your Majesty having opened your
 “ self in the Case of *Commendams*, and satisfied the
 “ Judges, that your Sending to them had no Intent
 “ to delay Justice: And the Question being put to the
 “ rest of them, Whether they did hold it for a Delay
 “ of Justice, that your Majesty had sent in the Case,
 “ or if you *should send hereafter* in a like Case, wherein
 “ your Majesty’s Progenitors were interested? the rest
 “ of the Judges submitting themselves, he only dis-
 “ sented from all the rest.

“ This being the Effect of your Solicitor’s Charge,
 “ your Lord Chief Justice made Answer, That he
 “ would, with their Lordships Favour, begin with
 “ the last; and that for the Point of challenging,
 “ and taking Exception at your Majesty’s Council
 “ Learned, speaking in the Case of *Commendams* by your
 “ Commandment, he acknowledged it for an Error,
 “ and humbly submitted himself. And as to the Point
 “ upon the Question asked of the Judges, touching
 “ Stay of Proceedings, he alone did deny when all
 “ the rest did yield, he said, that that Question in-
 “ cluding a Multitude of Particulars, which then
 “ suddenly occurred to his Mind, it caus’d him to
 “ make this Answer, *That when the Time should be,*
 “ *he would do that, which should become an honest and an*
 “ *upright Judge.*

“ And as for the Bond, he saith, That that Assu-
 “ rance was in hammering a Year and half, and the
 “ Transactions about it were *Elephantini Libri*, and
 “ it being twelve Years past, no Wonder his Me-
 “ mory was short therein, especially since about that
 “ Time he was employed, first in the great Service
 “ of the Priests Treason and *Cobham’s Conspiracy*,
 “ and the next Year in the Powder Treason; and, if
 “ any Thing hath slipped in the Multitude of Busi-
 “ nels, let these Services blot out his Errors.

“ *Secondly, Ab impossibili*, which was, that the
 “ Debt remaining at that Time was 33000 l. and
 “ that

“ that young Mr. *Hutton's Means* were very small,
 “ and not above 100 Marks *per Annum*, and that as
 “ soon as it came to a Possibility, when he first heard
 “ of Sir *Robert Riche's Offer*, he submitted it, before
 “ such Time as he remembred either the Statute or
 “ Defeasance.

“ *Thirdly, Cui Bono*, He said, he never had any Pro-
 “ fit or Advantage thereby, but only the Presen-
 “ tation to a Benefice, and that all the rest was his
 “ Wife's.

“ *Fourthly*, That the Crown was contented with the
 “ Installment, &c. and he did but take Bond for con-
 “ tinuing of it. And throughout all this he did sub-
 “ mit himself to your Majesty, and the Board, saying,
 “ *Actus non facit Reum, nisi Mens sit rea.*

“ And as to his Speech in the *King's-Bench*, he saith,
 “ *First*, Whatsoever was done (or said) was by com-
 “ mon Consent of the Judges; and for those Speeches,
 “ he acknowledged many of them were spoken,
 “ and he knew by whom, but not by him-
 “ self. And next he offered Four Considerati-
 “ ons.

“ *First*, That this Court (unto which neverthe-
 “ less he did not except) was only *ad informandum*
 “ and not *ad convincendum*. *Secondly*, That there were
 “ *Witnesses only on one Side*. *Thirdly*, That he had
 “ not seen the Interrogatories, and that they might
 “ be too short, &c. *Fourthly*, That it was concern-
 “ ing Words spoken above *Four Months* since, which
 “ being spoken connectively amongst other Things,
 “ might be diuersly reported and interpreted; and
 “ thereupon produced a Paper written by himself,
 “ containing, as he said, the true Passages of that
 “ Day: Which Paper we present to your Majesty
 “ herewith, being, as he saith, set down by him-
 “ self the Day after, *sedato Animo*. And touching
 “ these Words, *That the Common Law would be over-*
 “ *thrown, and the Judges would have but little to*
 “ *do at the Assizes, because the Light of the Law*
 “ *would be obscured by Pretence of Equity, &c.* he
 “ con-

The Controverſy between Lord Coke

“ confeſſeth the Words, but faith, they were not
 “ ſpoken the ſame Day, but at another Time in a
 “ Caſe of Sir *Anthony Mildmay's*; and added, that
 “ he would not maintain a Difference between the
 “ two Courts, nor bring it into Queſtion: Yet if
 “ what he ſaid were an Error, he might well ſay,
 “ *Erravimus cum Patribus*, and thereupon alledged
 “ three Examples, viz,

“ *Fiſt*, The Articles againſt Cardinal *Woolſey*,
 “ 20 *H. 8.* wherein the ſame Words are uſed by
 “ the Parliament, viz. That ſuch Proceedings in
 “ Chancery tended to the Subverſion of the Com-
 “ mon Law. *Secondly*, The Book, intituled, *Doctōr*
 “ *and Student*, aſſerts the ſame. *Thirdly*, Alſo an
 “ Opinion of the Judges in *Throgmorton's* Caſe in
 “ Queen *Elizabeth's* Time. And further added, it
 “ was agreed, that for the Time to come no Man
 “ ſhould maintain any Oppoſition. So that the
 “ Judges having received your Maſteſty's Command-
 “ ment by Mr. Attorney General, that no Bill of
 “ that Nature ſhall be hereafter received; he and
 “ his Brethren have cauſed the ſame to be entred as
 “ an Order in the ſame Court, which ſhall be obſer-
 “ ved.

“ This being the Effect of his Answer, we have
 “ thought good to add withal, that before us, as
 “ well in Speech as in Action, he behaved himſelf
 “ very modeſtly and ſubmiſſively.

White-hall,
June 26. 1616,

Subſcribed by moſt
of the Council.

Notwithſtanding which Report, he was within Four
 Days after cenſured as follows.

At Greenwich, June 30th 1616.

SIR *Edward Coke* Knight, Lord Chief Juſtice of
 the *King's-Bench*, preſenting himſelf this Day at
 our Board upon his Knees, Mr. Secretary *Winwood*
 ſigni-

signified unto him, That their Lordships had made their Report unto his Majesty of that which passed on *Wednesday* last at *Whitehall*, for which he was charged by his Majesty's Solicitor with certain Things, wherein His Majesty was much unsatisfied. Which Report contained a just and true Relation as well of those Things, which were then objected against him, as of his Answer thereunto in particular, and that rather to his Advantage than otherwise; which being delivered in Writing to His Majesty, and in his Princely Judgment duly weighed, and considered of, His Majesty was no Way satisfied with his Answer to any of those Points, wherewith he stood charged, *viz.* neither with that, which he made concerning the Bond and Defeazance upon an Instalment of a Debt of Sir *Christopher Hatton's*, late Lord Chancellor of *England*; nor yet in that, which he made concerning his Speeches of high Contempt, uttered as he sat in the Seat of Justice, concerning *the Overthrow of the Common Law*: Nor, lastly, in the Answer he offered to excuse his *uncivil and indiscreet Carriage* before His Majesty, being assisted with his Privy Council and his Judges. But that the Charge lieth still upon him, notwithstanding any Thing contained in his said Answer. Nevertheless, such is His Majesty's Clemency and Goodness, that he is pleased not to proceed heavily against him, but rather to look upon the Merit of his former Services, and accordingly hath decreed,

First, That he be sequestred from the Council-Table until His Majesty's Pleasure be further known.

Secondly, That he do forbear to ride his Summer's Circuit, as Justice of Assize.

Lastly, That during this Vacation, whilst he hath to live privately, and dispose of himself at home, he take into his Consideration, and review his Books of Reports, wherein His Majesty is informed there be many Extravagant and Exorbitant Opinions set down

1.

2.

3.

The Controversy between Lord Coke

down and published for positive and good Law; and if, in Reviewing and Reading thereof, he find any Thing fit to be altered or amended, the Correction thereof is left to his Discretion.

Amongst other Things His Majesty was not well pleased with the Title of those Books, wherein he stiled himself Lord Chief Justice of *England*, whereas he could challenge no more than Lord Chief Justice of the *King's Bench*, And having corrected what in his Discretion he thought and found meet in those Reports, he should bring the same privately to himself, that he might consider thereof, as in his Princely Judgment shall be found expedient.

Hereunto Mr. Secretary advised him to conform himself in all Duty and Obedience, as he ought, whereby he might hope that His Majesty in Time would receive him again to his gracious and Princely Favour.

Thereupon the Lord Chief Justice made Answer,
 “ That he did in all Humility prostrate himself
 “ to His Majesty's good Pleasure; That he acknowledged that Decree to be just, and proceeded rather from His Majesty's exceeding Mercy, than from his Justice: Gave humble Thanks to their Lordships for their Favours and Goodness towards him, and hoped that his Behaviour for the future Time should be such, as should deserve their Lordships Favours.

The Lords having thus far proceeded, the Lord Treasurer told him, That he had one Thing more to let him know, which belonged to the Lord Marshal to take notice of; which was, That his Coachman used to ride bare-headed before him, which was more than any Way he could assume or challenge to himself, and required him to forbear it for the future. To which the Lord Chief Justice answered, “ That his Coachman did it only for his own Ease and Pleasure, and not by his Command. And

The Controversy, &c.

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so with the like Submission and Acknowledgment of Favour, he departed.

And. Note, November the 15th following he was absolutely removed from his Chief Justiceship, &c. And Mr. Serjeant *Mountague*, who principally (with *Bacon* Attorney-General, and *Telverton* Solicitor) managed the Charge against him, succeeded in his Place: And soon after *Bacon* was made Lord Keeper, and *Telverton* Attorney-General.

F I N I S.

L I

The

to which the like submission and Acknowledgment of
 before the Court.

And where the Court removed from his Office, Justice, &c.
 And Mr. Serjeant Newland, who principally (with
 the Attorney General) managed the Charge against him, succeeded in his Place:
 And after a new was made, &c.

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